

DEPARTMENT OF STATE REVENUE

04-20140392.LOF

Letter of Findings Number: 04-20140392
Sales Tax
For Tax Year 2010, 2011, and 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUES**I. Sales Tax - Exemption Certificates.**

Authority: IC § 6-2.5-1-2; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-2.5-8-8; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#); [45 IAC 2.2-8-12](#).

Taxpayer protests the imposition of additional sales tax based on its failure to provide copies of valid exemption certificates.

II. Use Tax - Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-6; IC § 6-2.5-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Rhoads v. Indiana Dept. of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Indiana Dept. of State Revenue v. AOL, 963 N.E.2d 498 (Ind. 2012); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of additional use tax based on purchases made by credit card.

STATEMENT OF FACTS

Taxpayer is a wholesaler of home and mobile electronics with an Indiana location. Taxpayer is an Indiana S Corporation and properly registered with the Indiana Department of Revenue (the "Department") as a retail merchant. The Department audited Taxpayer's books and records and, using a statistical sampling and projection method, determined that additional sales and use taxes are due. The Department issued proposed assessments of base tax, interest, and penalties. Taxpayer protests the proposed assessment of additional sales and use taxes. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as needed.

I. Sales Tax - Exemption Certificates.**DISCUSSION**

Taxpayer protests the imposition of additional sales tax based on its failure to provide copies of valid exemption certificates. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue is whether Taxpayer met its burden to prove the assessment is incorrect.

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). The sales tax applies to retail transactions. A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2. Selling at retail means a retail merchant "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration" in the ordinary course of the merchant's business. IC § 6-2.5-4-1. Tangible personal property is personal property that "can be seen, weighed, measured, felt, or touched" IC § 6-2.5-1-27.

When an Indiana retail transaction occurs, "[t]he retail merchant shall collect the tax as agent for the state." IC § 6-2.5-2-1(b). Retail transactions ordinarily subject to use tax will be exempt if sales tax was paid at the point of purchase. IC § 6-2.5-3-4; [45 IAC 2.2-3-4](#). Additionally, a seller who accepts a proper exemption certificate "has no

duty to collect or remit the state gross retail or use tax on that purchase." IC § 6-2.5-8-8(a); [45 IAC 2.2-8-12\(b\)](#). However, "[u]nless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose." [45 IAC 2.2-8-12\(d\)](#) (emphasis added). A proper exemption certificate must be issued on a form and in a manner prescribed by the Department. IC § 6-2.5-8-8(a).

"Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). Such records include "all source documents necessary to determine the tax . . ." which would necessarily include properly completed exemption certificates a taxpayer accepted. Id. If the Department cannot determine a taxpayer's liability based on the documentation presented and the Department reasonably believes that the taxpayer has not reported the proper amount of tax due, the Department will propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b).

During the audit process, Taxpayer failed to provide properly completed exemption certificates for items which were selected and included in the statistical sample used to audit Taxpayer's books and records. During the protest process and in support of its protest, Taxpayer provided copies of Special Sales/Use Tax Exemption Certificates ("Exemption Certificates"), a Department form, for five purchasers. The Audit Division will first review the Exemption Certificates and determine their validity. If any of the Exemption Certificates are determined to be valid, then the Audit Division will review the statistical sample, remove exempt transactions, and recalculate Taxpayer's tax liability. Therefore, Taxpayer's protest of the proposed assessment of additional sales tax for purchases made by these five buyers is sustained subject to a review of the Exemption Certificates by the Department's Audit Division.

FINDING

Taxpayer's protest is sustained subject to a review by the Department's Audit Division of the Special Sales/Use Tax Exemption Certificates provided by Taxpayer.

II. Use Tax - Imposition.

DISCUSSION

Taxpayer protests the imposition of additional use tax based on purchases made by credit card. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). The issue is whether Taxpayer met its burden to prove the assessment is incorrect.

In addition to a sales tax, Indiana imposes a complementary use tax on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction" regardless of the merchant's or transaction's location. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#); IC § 6-2.5-3-2(a); [45 IAC 2.2-3-4](#). The use tax is "functionally equivalent to [the] sales tax." *Rhoades v. Indiana Dept. of State Revenue*, 774 N.E.2d 1044, 1047-48 (Ind. Tax Ct. 2002). "Indeed, the purpose of the use tax is merely to prevent evasion of the sales tax." *Indiana Dept. of State Revenue v. AOL*, 963 N.E.2d 498, 501 (Ind. 2012). The person who uses, stores, or consumes property acquired in a retail transaction in Indiana is responsible for payment of use tax on the transaction. IC § 6-2.5-3-6(b).

A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2. Selling at retail means a retail merchant "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration" in the ordinary course of the merchant's business. IC § 6-2.5-4-1. Tangible personal property is personal property that "can be seen, weighed, measured, felt, or touched . . ." IC § 6-2.5-1-27.

"Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). Such records include "all source documents necessary to determine the tax . . ." which necessarily includes original invoices for purchases made by a taxpayer. Id. If the Department cannot determine a taxpayer's liability based on the documentation provided and the Department reasonably believes that the taxpayer has not reported the proper amount of tax due, the Department will propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b).

Taxpayer, in this instance, argues that the auditor used its credit card statements to calculate additional use tax due rather than review individual invoices. During the protest process, Taxpayer provided a sample group of invoices which show that tax was calculated on the purchases shown on the invoices. Taxpayer argues that this sample group of invoices shows that it paid sales tax on the purchases made by credit card.

However, it appears from the audit report that the auditor requested copies of Taxpayer's invoices numerous times, but none were provided for the auditor's review to substantiate Taxpayer's assertion that it paid sales tax at the time of purchase. Although Taxpayer has now provided a sample group of invoices for purchases made during the tax years at issue, it has not demonstrated that the purchases on these invoices correlate to the specific purchases identified in the audit report, i.e. items which were included in the Department's statistical sample. Therefore, Taxpayer has not met its burden to show that the Department's assessment is incorrect, and its protest of the proposed assessment of additional use tax is denied.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

Taxpayer's protest on Issue I regarding the proposed assessment of additional sales tax is sustained subject to a review of Taxpayer's documentation by the department's Audit Division. Taxpayer's protest on Issue II regarding the proposed assessment of additional use tax is respectfully denied.

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