

**Letter of Findings: 04-20140604**  
**Gross Retail Tax**  
**For the Years 2011, 2012, and 2013**

**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Indiana car dealership failed to establish that an assessment of additional sales tax was incorrect. Car dealership failed to maintain records of its vehicle sales, and bank records provided to the Department's auditor established that car dealership underreported its vehicle sales income.

### ISSUE

#### **I. Gross Retail Tax - Used Car Sales.**

**Authority:** IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-9-3; IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-5-4(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that an assessment of additional sales tax is incorrect because it was based on a faulty calculation of the amount of retail car sales which occurred at his used car dealership.

### STATEMENT OF FACTS

Taxpayer operates a used car dealership as a sole proprietor. Taxpayer also buys and sells antiques, gold, silver, and guns at his business location.

The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's business records and tax returns. The audit resulted in an assessment of additional sales tax. Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

#### **I. Gross Retail Tax - Used Car Sales.**

### DISCUSSION

The issue is whether the assessment of additional sales tax is incorrect because the Department is assessing tax on services provided to customers at his used car dealership.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each 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); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that, when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

## **A. Audit Results.**

The Department's audit was triggered when Taxpayer submitted to the Bureau of Motor Vehicles ("BMV") a form ST-108 ("Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle or Watercraft") stating that no tax was collected on a sales transaction because the transaction was for "an even trade." However, Taxpayer thereafter placed a lien on the newly acquired vehicle which - upon consideration - was apparently under-priced.

During the course of the audit, Taxpayer indicated that "he did not retain records because he was unaware he had to" and that "he did not have any records of [car] sales or expenses."

Upon the audit's request, Taxpayer provided copies of his bank statements which indicated deposits made into his business account for approximately \$643,000 in 2011 and \$522,000 in 2012. Those amounts were more than the amount of sales reported on his sales tax returns. Taxpayer indicated that the apparent discrepancy was attributable to non-business sales of antiques, gold, silver, and antique guns.

The audit report points to what it regarded as discrepancies in Taxpayer's explanation of Taxpayer's business practices.

The dealership had approximately 20 vehicles on the lot; many of the vehicles had prices on the window that included a weekly payment amount. Inside the building there are two desks, one had a sign on it stating "If you cannot make weekly payments do not ask for credit." [Taxpayer] stated they do not take payments there nor do they have a buy here pay here program. Occasionally they will allow someone to make payments and they will hold the money until full payment is made. They claim the vehicle does not leave the lot until full payment is received. However, additional research through the BMV revealed [Taxpayer] is the first lien holder on 28 of the 50 transactions researched for 2012.

The audit report also found other discrepancies between the amount of sales tax reported to the state and the number of vehicle transactions which were reported to the BMV.

Reports from the Bureau of Motor Vehicles were referenced for 2011 and 2012. The BMV report for 2011 reports a total of 59 transactions that collected sales tax. The report shows \$140 sales tax collected in 14 of those transactions and \$210 sales tax collected in 18 transactions. In 2012 there were a total of 50 transactions that collected sales tax and 27 of those transactions reported \$140 sales tax collected. These reports do not appear to be accurate . . . (Emphasis added).

Taxpayer explained that some of the income deposited into its bank account was for repair services but "they did not have any records."

## **B. Taxpayer's Response.**

Taxpayer's representative responded that the Department improperly based its assessment of additional tax on money deposited into its bank account. According to Taxpayer's representative, "This does not accurately reflect the expenses paid for those sales transactions. The [T]axpayer has several car repair costs associated with every vehicle sale."

## **C. Hearing Analysis.**

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A retail merchant - such as Taxpayer - is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." IC § 6-2.5-9-3.

Many of the difficulties incurred during this audit were attributable to Taxpayer's failure to maintain or retain records of its sales transactions. The audit report indicates the Department repeatedly sought access to Taxpayer's records.

Records were requested several times over several months. The deadline to provide records was extended at the [T]axpayer's representative's request. [Taxpayer's representative] did not respond to email requesting records be forwarded to the Department and asking basic business information.

Attempting to provide a reason for the absence of business records, Taxpayer's representative explained during the audit that "[u]nfortunately a water accident destroyed a large number of his pertinent documents" and that he could not "consecutively spend 48 hours to go through all his receipt[s]." Taxpayer's representative was asked to simply forward the available receipts but no response was received.

IC § 6-8.1-5-4(a) requires that taxpayers maintain and retain records sufficient to determine each taxpayer's liability. "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 tax by reviewing those books and records." In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times."

Based on records submitted by Taxpayer to the BMV, Taxpayer was collecting and reporting to the state between \$5.00 and \$12.00 in sales tax for each vehicle sold to its customers. Taxpayer's sales records do not survive close scrutiny. Based on its own bank records, Taxpayer underreported income from vehicle sales by approximately 400 to 600 percent.

Given the absence of any records to the contrary or any reasonable explanation of the manner in which it conducted its business, the Department is unable to agree that Taxpayer has met its burden of demonstrating that the proposed assessment of additional sales tax was "wrong" as required under IC § 6-8.1-5-1(c).

### **FINDING**

Taxpayer's protest is denied.

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