

DEPARTMENT OF STATE REVENUE

04-20150068.LOF

Letter of Findings Number: 04-20150068
Sales Tax
For Tax Years 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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in the Letter of Findings.

HOLDING

A retail merchant provided proper information and invoices to show that they provided the service of delivery and setup for a tractor, rather than actually selling the product. Therefore, the retail merchant did not owe sales tax.

ISSUE**I. Sales Tax - Assessment.**

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-1; Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the Department's proposed assessments of sales tax of a tractor purchased by customer.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer sells tangible personal property to customers, occasionally on behalf of other dealers. In 2013, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit for 2011, 2012, and 2013 tax years. Both Taxpayer and the Department agreed to utilize a statistical sample method to project the audit result. Pursuant to the audit, the Department determined that Taxpayer did not collect and remit sales tax on certain retail transactions. The Department thus imposed additional sales tax for the tax year at issue.

Taxpayer protested the assessment of sales tax on one transaction, claiming that Dealer collected and remitted sales tax to the State on the selling of the tractor. Taxpayer stated this was the only transaction during the audit review where Dealer had collected and remitted the sales tax. Taxpayer agreed, during a phone conversation, not to have a formal hearing and submitted documents and an explanation of the protested transaction. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales Tax - Assessment.**DISCUSSION**

The Department's audit determined that Taxpayer failed to collect sales tax on certain retail transactions. Taxpayer protests the assessment of sales tax on one transaction. Taxpayer argues that Dealer collected and remitted sales tax on the sale of the tangible personal property, the tractor. Thus, Taxpayer believes that the Department's assessment was overstated.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong.

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 person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Additionally, the purchaser "shall pay

the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." Id.

In this case, Customer has a national account with Dealer. Customer placed the order with Dealer and designated Taxpayer as the delivering dealership. Taxpayer set up the tractor and delivered it to Customer on behalf of Dealer. The transaction was a taxable sale for Dealer and they collected and remitted the sales tax. Taxpayer "invoiced" the tractor in order to take it out of our inventory.

Initially, the auditor thought Taxpayer did not remit sales tax when it took the product out of inventory, but it is the Dealer that remitted sales tax. Taxpayer provided all relevant invoices to show that Dealer credited/paid Taxpayer for the tractor, and that Dealer collected sales tax. In addition, Taxpayer provided documentation to show that Dealer remitted the sales tax collected to Indiana. Therefore, Taxpayer did not actually sell the property to the Indiana customer.

FINDING

Taxpayer's protest is sustained.

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