**DEPARTMENT OF STATE REVENUE**

04-20140141.LOF

**Letter of Findings Number: 04-20140141**
**Use Tax**
**For Tax Year 2011**

**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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The individual was able to provide documentation establishing that a vehicle was never brought into Indiana. The individual met the burden of proving the proposed assessment for use tax incorrect.

## ISSUES

### I. Use Tax–Out-of-State Delivery.

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; 45 IAC 2.2-3-4; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); 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 proposed assessments for additional use tax.

### II. Tax Administration–Negligence Penalty.

**Authority:** IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of a ten percent negligence penalty.

## STATEMENT OF FACTS

Taxpayer is an individual who owns several car dealerships in Indiana and other states. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer had purchased a vehicle in another state without paying sales tax in that state and then had brought the vehicle into Indiana without titling the vehicle in Indiana and without paying Indiana sales or use tax. The Department therefore issued proposed assessments for use tax, penalty, and interest. Taxpayer filed a protest of those proposed assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

### I. Use Tax–Out-of-State Delivery.

## DISCUSSION

Taxpayer protests the imposition of use tax on a car which was purchased in another state. The Department based its determination on the basis that a dealership owned by Taxpayer purchased the vehicle in another state but did not pay sales tax to the other state at the time of purchase. Also, the Department determined that Taxpayer was an Indiana resident and that Taxpayer therefore used the car in Indiana as an individual, but did not register the vehicle in Indiana or pay use tax to Indiana. Taxpayer states that the car was delivered straight from the state of purchase to a third state where he owns a dealership specializing in that type of vehicle. Therefore, Taxpayer argues, the car never entered Indiana and no Indiana use tax is due.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] 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). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

> (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
> (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, 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.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

> An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

45 IAC 2.2-3-4 further explains:

> Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, if sales tax is not paid when tangible personal property ("TPP") is purchased and the TPP is used in Indiana, use tax will be imposed.

Taxpayer states that the vehicle was purchased by an LLC owned by Taxpayer at an out-of-state location. The LLC then transferred the vehicle to another business owned by Taxpayer. The other business is in a third state. In support of its argument, Taxpayer provided a bill of lading showing pickup in the state of purchase and delivery in the third state at the address of Taxpayer's auto dealership in the third state.

While the Department's initial impression that an Indiana resident could have had a vehicle purchased in another state and then used that vehicle in Indiana and therefore resulting in Indiana use tax liabilities was reasonable, Taxpayer has established that the vehicle never entered Indiana. As required by IC § 6-2.5-3-2(a) and 45 IAC 2.2-3-4, TPP must be stored, used, or otherwise consumed in Indiana in order to be subject to Indiana use tax. In this case, Taxpayer has established that the vehicle never entered Indiana and so was never stored, used, or otherwise consumed in Indiana. Taxpayer has therefore met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment of use tax wrong.

**DISCUSSION**

Taxpayer's protest is sustained.

**II. Tax Administration–Negligence Penalty.**

**DISCUSSION**

The Department issued a proposed use tax assessment and a ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty. Taxpayer believes that he acted in a reasonable manner and that the penalty should be waived.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

> If a person:
> . . .
> (3) incurs, upon examination by the department, a deficiency that is due to negligence;
> . . .
> the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

> "Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-[2.1] if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer was issued a proposed assessment for use tax. The Department determined that the tax was unpaid due to negligence under 45 IAC 15-11-2(b), and so was subject to penalty under IC § 6-8.1-10-2.1(a). In the course of the protest process, Taxpayer was able to establish that no use tax was due. Therefore, Taxpayer established that he exercised ordinary business care and prudence in carrying out his tax duties. Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment of penalty wrong.

**FINDING**

Taxpayer's protest is sustained.

**SUMMARY**

Taxpayer is sustained in Issue I regarding the imposition of use tax. Taxpayer is sustained in Issue II regarding the imposition of penalty for the year at issue.

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