

## DEPARTMENT OF STATE REVENUE

04-20140582.LOF

**Letter of Findings Number: 04-20140582**  
**Sales Tax**  
**For Tax Years 2011-13**

**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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 retail merchant did not keep adequate records to verify its position that certain sales were exempt from sales tax. The imposition of additional sales tax was correct.

**ISSUE****I. Sales Tax—Exempt sales.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-7; IC § 6-8.1-5-1; 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 sales tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana retail merchant. As the result of a sales tax and use tax audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had under-collected sales tax as a retail merchant and had underpaid use tax as a consumer for the tax years 2011, 2012, and 2013. One of the areas in which the Department determined that Taxpayer had under-collected sales tax was a bookkeeping account in which Taxpayer listed certain sales to its customers as exempt from sales tax without keeping adequate documentation to verify that those sales were exempt. The Department therefore issued proposed assessments for sales and use taxes, along with interest for those years. Taxpayer protests that the sales in question were exempt sales and that the proposed assessments resulting from the imposition of sales tax on that account were incorrect. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Sales Tax—Exempt sales.****DISCUSSION**

Taxpayer protests the imposition of sales tax on sales listed in one of its bookkeeping accounts for the tax years 2011, 2012, and 2013. The Department based its determination that the sales listed in that account were subject to sales tax on the basis that Taxpayer had no documentation tying those sales to exempt customers. Taxpayer protests that it did not know that it needed to keep such records. Also, Taxpayer explains that the two retail locations in question are located in small rural communities where the customers and store employees all know each other and that the majority of its customers are eligible for the agricultural exemption. Taxpayer states that it had exemption certificates on file, but that it merely did not keep records tying cash sales to specific exempt customers. Taxpayer believes that since it had exemption certificates and knowledge of which of its customers' purchases were exempt, the proposed assessments are incorrect.

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.

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Next, the Department refers to IC § 6-2.5-3-7, which states in part:

- (a) A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the person or the retail merchant can produce evidence to rebut that presumption.
- (b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form prescribed by the department, that the acquisition is exempt from the use tax.

(Emphasis added).

Therefore, a retail merchant is not required to collect and remit sales tax on sales to resellers if the retail merchant receives exemption certificates from their customers, as provided by IC § 6-2.5-3-7.

In the instant case, Taxpayer received exemption certificates, but did not keep records which tied those sales listed as exempt cash sales to the relevant exemption certificates. In such a case, the Department is unable to verify that the sales listed as exempt are actually exempt. On the other hand, for sales listed as exempt and which were purchased on credit, Taxpayer did have records which allowed the Department to tie those sales to exemption certificates. The Department did not impose sales tax on those sales.

Since Taxpayer was unable to produce documents to tie cash sales listed as exempt to specific exemption certificates, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c). Taxpayer has not proven the proposed assessments wrong.

## FINDING

Taxpayer's protest is denied.

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