

DEPARTMENT OF STATE REVENUE

04-20140533.LOF

Letter of Findings Number: 04-20140533
Sales/Use Tax
For Tax Years 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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. 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

Business was able to provide documentation supporting its protest that certain sales were exempt from sales tax. The protest was sustained subject to verification in a supplemental audit.

ISSUE**I. Sales Tax - Imposition: Exempt Sales.**

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-1; 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); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 2.2-8-12](#); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Taxpayer protests the Department's proposed assessments on certain sales, claiming some of its customers were exempt from sales tax.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana selling new and used automobiles, replacement parts, and providing service repair sales. In 2014, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit for the 2011 and 2012 tax years. Due to the volume of sales for the audit periods, Taxpayer and the Department agreed to utilize a projection computation from an average sales month to project the audit results. Pursuant to the audit, the Department determined that Taxpayer did not collect and remit sales tax on various retail transactions, nor did it provide the Department properly executed exemption certificates at the time of the audit. The Department's audit also determined that Taxpayer did not pay sales tax or self assess and remit use tax on certain purchases of tangible personal property, which Taxpayer used for its business. The Department assessed sales tax and use tax for the tax years at issue.

The sole issue which the Taxpayer protests is the assessment on the exempt transactions. An administrative hearing was held. This Letter of Findings is a result of the administrative hearing.

I. Sales Tax - Imposition: Exempt Sales.**DISCUSSION**

The Department's audit determined that Taxpayer failed to collect sales tax on various retail transactions. Taxpayer believes that the Department's assessments were overstated, arguing it was not responsible for collecting sales tax on sales to customers who are qualified for exemption.

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.

Indiana imposes an excise tax called "the state gross retail tax" ("sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

IC § 6-2.5-2-1 provides:

- (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.**

(Emphasis added).

IC § 6-2.5-4-1 (as in effect for tax years at issue), in pertinent part, provides:

- (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- ...
- (e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:
 - (1) the price of the property transferred, without the rendition of any service; and
 - (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

Additionally, [45 IAC 2.2-8-12](#), in pertinent part, provides:

- ...
- (b) Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used by the purchaser for an exempt purpose.
- (c) All retail sales of tangible personal property for delivery in the state of Indiana shall be presumed to be subject to sales or use tax until the contrary is established. The burden of proof is on the buyer and also on the seller unless the seller receives an exemption certificate.
- (d) Unless 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. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. The mere filing of a Registered Retail Merchant Certificate number is not sufficient to relieve the seller of the responsibility to collect the sales tax or prove exempt use by the buyer.
- (e) No exemption certificates are required for sales in interstate commerce, however, proper records must be maintained to substantiate such sales.
- (f) An exemption certificate issued by a purchaser shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.
- (g) An exemption certificate or other evidence supporting an exempt sale must be maintained by the seller for at least three (3) years after the due date of the tax return upon which such exempt transaction is reported.
- (h) Exemption certificates may be reproduced provided no change is made in the wording or content.

In this instance, the Department's audit noted that Taxpayer sells tangible personal property, specifically, automobile replacement parts and repair services sales. Taxpayer does not dispute it is a retail merchant and must collect and remit sales tax as an agent of the State of Indiana. However, Taxpayer failed to collect taxes on some sales, and was unable to provide exemption certificates, which it should have collected from its customers, to the Department's auditor during the audit. The auditor was therefore unable to verify whether certain sales were exempt from the sales tax.

Pursuant to [45 IAC 2.2-8-12\(b\)](#), "Retail merchants are required to collect sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used for an exempt purpose." [45 IAC 2.2-8-12\(d\)](#) also cautions that, "Unless 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. It is, therefore, very important for the seller to obtain an exemption certificate in order to avoid the necessity for such proof." Without an exemption certificate verifying the sale was exempt from sales tax, the Department's audit properly assessed sales tax on the otherwise taxable sales.

Taxpayer entered into retail transactions in which Taxpayer was required to collect sales tax unless an exemption certificate was presented. At the hearing, Taxpayer supplied exemption certificates from most of its customers for the sales at issue, showing that most of the sales in question were in fact exempt from sales tax.

Taxpayer is reminded that sales tax becomes due at the time of the transaction; either the purchaser is exempt at the time of the transaction or it is not exempt. If the purchaser claims an exemption, the exemption certificate must be obtained at the time the transaction occurs otherwise it is the Taxpayer who bears the burden of proving the transaction was exempt or who must pay the sale tax.

FINDING

Taxpayer's protest is sustained subject to the results of the Department's supplemental audit review.

Posted: 07/29/2015 by Legislative Services Agency
An [html](#) version of this document.