

Letter of Findings: 04-20140645.LOF
Gross Retail Tax
For the Tax Years 2011-2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Retail merchant did not provide proper exemption certificates or AD-70 forms on certain retail transactions and therefore is still responsible for sales tax on those transactions.

ISSUE

I. Sales Tax—Exempt Sales.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-1-2; IC § 6-2.5-4-1; [45 IAC 2.2-8-12](#); 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 imposition of sales tax on two of its sales transactions.

STATEMENT OF FACTS

Taxpayer is an Indiana business operating a retail truck parts store. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records for the 2011-2013 tax years. As a result of that audit, the Department issued assessments of gross retail tax ("sales tax"), use tax, and interest. Taxpayer protested part of the sales tax assessment. An administrative hearing was held, and this Letter of Findings ensues. Additional information will be provided as necessary.

I. Sales Tax—Exempt Sales.

DISCUSSION

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).

Taxpayer provided a copy of an additional exemption certificate. Taxpayer indicates that this certificate was not considered during the original audit. However, the exemption certificate provided was signed and dated after the sales transaction(s) occurred. Taxpayer also offered an out-of-state exemption certificate, which Indiana cannot accept. Thus, Taxpayer was asked to provide a Form AD-70 for both transactions, which is the form that is allowed for a Taxpayer to demonstrate an exemption after the sales transaction has occurred.

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1 . . . or that is described in any other section of IC § 6-2.5-4." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." Furthermore, a retail merchant "has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

During the audit, Taxpayer was unable to provide proper exemption certificates for two of its transactions where sales tax was not collected. The auditor was therefore unable to verify that those sales were exempt from the sales tax. The relevant regulation is [45 IAC 2.2-8-12](#)(b) which states, "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." The regulation 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 to the seller to obtain an exemption certificate in order to avoid the necessity for such proof." [45 IAC 2.2-8-12](#)(d).

There is no question that Taxpayer entered into retail transactions for which - absent an exemption - Taxpayer was required to collect sales tax. Taxpayer provided two improper exemption certificates for customers but could not obtain an AD-70 exemption form for each transaction.

FINDING

Taxpayer's protest of sales tax is respectfully denied.

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