

Supplemental Letter of Findings Number: 04-20130590
Use Tax
For Tax Years 2010-12

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 consumer of tangible personal property was able to provide documentation to establish that it paid sales tax on the purchases under protest at the time of purchase. The imposition of use tax on these items was incorrect.

ISSUE

I. Use Tax—Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; 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); [45 IAC 2.2-3-4](#).

Taxpayer protests the Department's assessment of use tax on certain items.

STATEMENT OF FACTS

Taxpayer is an Indiana business. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on all purchases of tangible personal property during the tax years 2010, 2011, and 2012. The Department therefore issued proposed assessments for use tax and interest for those years. Taxpayer protested the imposition of use tax on some of those purchases. An administrative hearing was held and a Letter of Findings resulted, denying Taxpayer's protest. Taxpayer requested a rehearing, providing new documentation supporting its position that sales tax had already been paid on certain purchases of tangible personal property ("TPP"). A supplemental administrative hearing was held and this Supplemental Letter of Findings results. Further facts will be presented as required.

I. Use Tax—Imposition.

DISCUSSION

Taxpayer protests that use tax is not due on certain transactions which the Department determined were subject to use tax during the tax years 2010-12. Taxpayer states that sales tax was paid at the time of purchase or lease of these items and that the imposition of use tax is therefore inappropriate. The Department based its determination of use tax due on a review of the available documentation during the audit.

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 Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. 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, when tangible personal property ("TPP") is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction, or if there is an applicable exemption to sales and use taxes. A transaction subject to the state's sales tax necessarily involves the transfer of TPP.

In the course of the protest process, Taxpayer stated that it had paid sales tax on its purchases of certain TPP upon which the Department had imposed use tax. Specifically, Taxpayer protests that it paid sales tax when it purchased three categories of TPP from a specific out-of-state vendor ("Vendor"). In support of its position, Taxpayer provided a letter from Vendor stating that applicable sales tax was charged on these transactions, as well as a copy of the leasing contract for one group of the items at issue.

In the course of the initial hearing and after a review of the letter from Vendor and the leasing agreement for the group of items under protest, the Department did not agree that these documents established that Indiana sales tax was paid on the transactions at the time of purchase. The Department therefore denied the protest in the initial Letter of Findings.

However, in the rehearing process Taxpayer was able to provide invoices from Vendor which show that sales tax was paid at the time of purchase. Since Indiana use tax is only due when sales tax was not paid at the time of purchase and since Taxpayer has now shown that sales tax was paid at the time of purchase, Indiana use tax is not due on the purchases from Vendor. Taxpayer has met the burden of proving the proposed use tax assessments incorrect, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

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