

## DEPARTMENT OF STATE REVENUE

04-20140578.LOF

**Letter of Findings Number: 04-20140578**  
**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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 meet the burden of proving its position that certain sales were exempt from sales tax. The imposition of additional sales tax was correct.

**ISSUE****I. Sales Tax—Sales and Use tax.**

**Authority:** IC § 6-2.5-1-5; IC § 6-2.5-2-1; IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. 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 corporation with its principal operations as an automotive body shop. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer for sales and use taxes for the tax years 2011, 2012, and 2013. The Department determined that as a retail merchant Taxpayer was not collecting and remitting sales tax on all taxable sale amounts. The Department therefore issued proposed assessments for sales tax. Taxpayer protested a portion of the proposed sales tax assessments and an administrative hearing was held. This Letter of Findings results. Further facts will be supplied as required.

**I. Sales Tax—Sales and Use tax.****DISCUSSION**

Taxpayer protests the imposition of sales tax on certain amounts which Taxpayer charged its customers. The Department based its proposed assessments on its determination that Taxpayer had failed to collect and remit sales tax on consumable supplies for which Taxpayer charged its customers. Those charges were included as part of the total amounts which it charged its customers for repairs. The Department concluded that Taxpayer was charging its customers a single price for all items of tangible personal property ("TPP") which Taxpayer either used or sold in the repair process but for which it was only charging sales tax on the non-consumable TPP it sold.

Taxpayer protests that it paid sales tax at the time the consumable supplies were purchased and that it did not need to collect sales tax on the subsequent sale of these items. Taxpayer further protests that it cannot include the consumables on the invoice to customers because it is not selling the consumables but rather is using them to attain a finished product for its customers. Taxpayer contends it cannot sell the consumables to the customer because it is not practical or feasible. Taxpayer also believes that it has paid the sales tax and is essentially out the same amount of money regardless if it is able to report the proper taxable amounts and that if its protest is denied then Taxpayer will be assessed sales tax twice on the same consumable items.

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.

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

In the instant case, Taxpayer did not collect or remit sales tax on the total price it charged its customers for TPP used in its automotive repair business. Taxpayer purchased consumable items which it used in providing its repair services and paid sales tax at the time of purchase. Then, Taxpayer would charge its customers for TPP and labor provided in the repair services. According to Taxpayer, the insurance companies that use and pay Taxpayer for the automotive repairs will not approve charges for consumable items. In order to receive compensation for the consumables, Taxpayer included the price it paid for the consumables in the category of "paint materials." This way, Taxpayer was reimbursed for the cost of the consumables.

Taxpayer protests that, if the proposed assessments are upheld, the state will be collecting sales tax twice on the transfer of the same TPP. The first time sales tax is collected is at the time Taxpayer purchases the TPP. The second time would be, if the proposed assessments are upheld, on the charge Taxpayer charges its customers in cases where an insurance company pays for the repair.

Taxpayer determined that, since it had already paid sales tax when it purchased the consumables, it did not need to collect sales tax when it charged its customers for the consumables. Therefore, Taxpayer only collected sales tax on the price it charged for non-consumable TPP even though it listed a total charge for both consumable and non-consumable TPP. Taxpayer has not referred to any statute, regulation or court case which supports its position that a retail merchant may choose when to collect and remit sales tax when there is a sale of TPP.

To the contrary, the Department refers to IC § 6-2.5-1-5(a), which provides:

Except as provided in subsection (b), "gross retail income" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges; or
- (5) consideration received by the seller from a third party if:
  - (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
  - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
  - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
  - (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser. For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(Emphasis added).

Therefore, when a retail merchant transfers ownership of TPP for consideration, all elements of consideration are

included in the gross retail income subject to tax. In the instant case, Taxpayer charged its customers for the transfer of TPP in the form of paint which was applied to automobiles. According to IC § 6-2.5-1-5(a), all elements of consideration are included in gross retail income subject to tax. The consideration in question is the amount Taxpayer charged for paint. How Taxpayer arrived at that number is irrelevant since all elements of consideration are included in the amount subject to sales tax. 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.

*Posted: 09/30/2015 by Legislative Services Agency*  
An [html](#) version of this document.