

DEPARTMENT OF STATE REVENUE

04-20150262.LOF

Letter of Findings Number: 04-20150262
Sales Tax
For Tax Years 2012 and 2013

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was required to collect sales tax or, alternatively, obtain properly executed exemption certificates from customers who claimed their purchases were exempt from Indiana sales tax.

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

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; [IC 6-2.5-5](#); IC § 6-2.5-8-8; IC § 6-2.5-9-3; 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](#).

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. Taxpayer sells tangible personal property to its customers. In 2014, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit for 2012 and 2013 tax years. The Department found that Taxpayer did not collect and remit sales tax on various Indiana retail transactions, nor did it obtain the properly executed exemption certificates from those customers who claimed the exemptions. During the audit, the Department permitted Taxpayer additional time to contact those customers to obtain the properly executed special exemption certificates, AD-70 forms. In the absence of the properly executed exemption certificates, the Department imposed additional sales tax and interest for the tax years at issue.

Taxpayer protested the assessment imposed on various transactions concerning various customers. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

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

The Department assessed sales tax on various retail transactions in which Taxpayer sold tangible personal property to its customers but failed to collect sales tax or properly executed exemption certificates. Taxpayer contended that it was not responsible for the sales tax because its customers claimed that those sales were exempt from sales tax. The issue in this case is whether Taxpayer's documentation sufficiently demonstrates that its customers were exempt.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (namely, a purchaser) is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). "The retail merchant shall collect the tax as agent for the state." Id.

"Retail transaction" is "a transaction of a retail merchant that constitutes selling at retail as described in [IC 6-2.5-4-1](#) . . . or . . . in any other section of [IC 6-2.5-4](#)." IC § 6-2.5-1-2(a).

IC § 6-2.5-4-1 (as in effect for tax years at issue), in relevant 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.

When a purchaser claims that a retail transaction is exempt from the sales tax, the purchaser is required to provide and the retail merchant (i.e., seller) must collect a properly executed exemption certificate. IC § 6-2.5-8-8 further provides the general rules for exemption certificates. "A person . . . , who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. IC § 6-2.5-8-8(a). **"The person shall issue the certificate on forms and in the manner prescribed by the department.** A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase." Id. (**Emphasis added**).

Additionally, "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." [45 IAC 2.2-8-12](#)(b). "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.** [45 IAC 2.2-8-12](#)(f) (**Emphasis added**).

Accordingly, sales of tangible personal property by retail merchants (i.e., sellers) are taxable, unless specifically exempt by a statute under IC § 6-2.5-5. The sellers are required to collect sales/use tax at the time of the transactions or, alternatively, to obtain properly executed exemption certificates from customers who claim the statutory exemptions.

There is no dispute that Taxpayer is a retail merchant engaged in retail transactions (selling tangible personal property) in Indiana, which requires that Taxpayer collect and remit the sales tax to Indiana in regards to those sales unless a valid exemption certificate is presented. IC § 6-2.5-2-1(b); IC § 6-2.5-8-8. The Department noted that Taxpayer should have collected and remitted the sales tax on those sales. Taxpayer did not do so. Nor did Taxpayer provide to the Department's audit the properly executed exemption certificates, which it should have collected from its customers. The auditor was therefore unable to verify whether certain sales were exempt from the sales tax. The Department thus instructed Taxpayer to obtain properly executed special exemption certificates, AD-70 forms. Without these properly executed special exemption certificates, Taxpayer as retail merchant is not relieved from its duty to collect the sales tax. In the absence of the properly signed and executed exemption certificates (AD-70 forms), the Department's audit properly assessed sales tax on the otherwise taxable sales. Without the valid exemption certificates, Taxpayer is liable for the sales tax. IC § 6-2.5-9-3.

In summary, 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." In the absence of the properly signed and executed exemption certificates, the Department's audit properly assessed sales tax on the otherwise taxable sales.

There is no question that Taxpayer entered into retail transactions for which - absent an exemption - Taxpayer was required to collect 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 should be obtained at the time the transaction occurs otherwise the burden of proving the transaction was exempt becomes measurably more difficult.

During the protest process, Taxpayer submitted additional AD-70 forms signed by its customers to support its contention that those sales were exempt. In light of the additional supporting documents provided by Taxpayer, the Department's Audit Division is requested to review the newly submitted AD-70 forms in a supplemental audit. That is, pending upon the result of the supplemental audit review, the Department will recalculate Taxpayer's tax liability after verifying the validity of those AD-70 forms.

FINDING

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

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