

**Letter of Findings: 04-20150038
Gross Retail Tax
For the 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Dealership was responsible for remitting Indiana sales tax because it could not provide sufficient documentation to show that it delivered the vehicles sold to out-of-state customers.

ISSUE

I. Gross Retail Tax - Out-of-State Vehicle Sales.

Authority: IC § 6-2.5-2-1; 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); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 2.2-6-8](#); Sales Tax Information Bulletin 28S (April 2012); Sales Tax Information Bulletin 28S (October 2011).

Taxpayer argues that the Department erred in assessing additional tax on the sales of vehicles it sold to out-of-state customers.

STATEMENT OF FACTS

Taxpayer is an Indiana company which sells new and used cars at multiple Indiana dealership locations. Taxpayer also operates a full service repair department.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns. The audit resulted in an assessment of additional sales tax.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results.

I. Gross Retail Tax - Out-of-State Vehicle Sales.

DISCUSSION

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing sales 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). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position 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); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Audit Result

The Department's audit reviewed Taxpayer's sales records. The audit found that Taxpayer sold vehicles to

out-of-state customers and did not collect sales tax on those sales. The audit report explained that absent statutory exemption, all sales of motor vehicles purchased in Indiana are subject to Indiana sales and use tax, even if the purchaser intends to title the vehicle for use in another state. The Department assessed sales tax pursuant to "[45 IAC 2.2-6-8](#) which states that in determining the retail merchants' [sic] tax liability for a particular reporting period, the retail merchant shall multiply the retail merchant's total retail income from taxable transactions made during the reporting period by the sales tax rate."

Taxpayer's Response

Taxpayer argued that the Department's assessment results in an impermissible double tax on the same sales. Taxpayer stated that it collected and remitted sales tax to Illinois whenever an Illinois customer purchased a vehicle from it; by taxing the same sales again Indiana improperly double taxed the Taxpayer. Taxpayer stated that in order to alleviate this problem the Department must credit Taxpayer for sales tax remitted to Illinois.

Analysis

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 retail merchant - such as Taxpayer - is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes" IC § 6-2.5-9-3.

Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA, provides as follows:

A vehicle or trailer sold in **interstate commerce** is not subject to the Indiana sales tax. To qualify as being "sold in interstate commerce," the vehicle or trailer **must be physically delivered, by the selling dealer to a delivery point outside Indiana**. The delivery may be made by the dealer, or the dealer may hire a third-party carrier. Terms and the method of delivery must be indicated on the sales invoice. The dealer must document terms of delivery and must keep a copy of such terms of delivery to substantiate the interstate sale. The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer outside Indiana. If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale. **(Emphasis in original)**. See also Sales Tax Information Bulletin 28S (October 2011), 20110928 Ind. Reg. 045110549NRA.

In this case, Taxpayer has provided no proof that the vehicles sold to out-of-state customers were exempt. Taxpayer also did not provide documentation to show that vehicles were delivered out of state. As provided by IC § 6-2.5-2-1(a) as a retail merchant, Taxpayer was required to collect and remit sales tax on Indiana transactions. While double taxation may be considered an issue, Taxpayer remitted sales tax to the wrong state; the transaction occurred in Indiana therefore, sales tax is due to Indiana. Taxpayer failed to meet its burden under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

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