

DEPARTMENT OF STATE REVENUE

04-20150086.LOF

Letter of Findings Number: 04-20150086
Sales/Use Tax
For Tax Years 2011 and 2012

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Contractor provided proper documentation demonstrating that the steel sheeting was used in a federal government construction project. However, Contractor did not provide receipts to show sales tax was paid on capital assets and therefore the imposition of use tax on capital purchases by the Department was proper.

ISSUE

I. Sales/Use Tax - Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; [IC 6-2.5-5](#); IC § 6-8.1-5-1; IC § 6-2.5-5-24; IC § 6-8.1-5-4; 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); Indiana Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Rhoads v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); [45 IAC 2.2-3-4](#); Sales Tax Information Bulletin 60 (April 2011).

Taxpayer protests the Department's proposed assessments on the imposition of use tax on sheet piling used in a construction project and capital assets purchased by Taxpayer.

STATEMENT OF FACTS

Taxpayer is a contractor that is an S-Corporation ("S-Corp"). Taxpayer is also a registered retail merchant. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit for the 2011 and 2012 tax years, concluding that Taxpayer owed use tax on certain items. The Department found that sales of materials were made in which sales tax was not collected at the time of the purchase.

Taxpayer specifically protested the proposed assessments concerning steel sheeting used in a government project and capital assets purchased for nongovernmental jobs. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales/Use Tax - Exemption.

DISCUSSION

The Department audited Taxpayer for the years stated above. The Department assessed sales tax on materials sold for which sales tax was not collected. The Department also assessed use tax on items Taxpayer purchased and used, stored, or consumed in Indiana. Taxpayer argues that certain items were exempt from use tax, and that sales tax was paid on other items at the time of purchase.

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. Also, when courts examine "a statute that an agency is 'charged with enforcing . . . [the courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Indiana Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014) (internal citation omitted).

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 tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Additionally, the purchaser "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." Id.

Indiana also imposes a complementary excise tax called "the use tax" 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." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

IC § 6-2.5-3-4, which specifically pertains to use tax, states in relevant part:

- (a) The storage, use, and consumption of tangible personal property in Indiana is exempt from the use tax if:
 - (1) the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property; or
 - (2) the property was acquired in a transaction that is wholly or partially exempt from the state gross retail tax under any part of [IC 6-2.5-5](#), except [IC 6-2.5-5-24](#)(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.
- (b) If a person issues a state gross retail or use tax exemption certificate for the acquisition of tangible personal property and subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person shall pay the use tax.

An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). There are other tax exemptions also available as outlined in IC § 6-2.5-5.

A. Steel Sheeting.

The audit determined that the use tax was due on the renting of steel sheeting as stated on page eleven of the audit report. Taxpayer argued that it should not have to pay sales tax on the steel sheeting because the sheeting was used for a federal government construction project. IC § 6-2.5-5-24 states in relevant part,

- (a) Transactions are exempt from the state gross retail tax to the extent that the gross retail income from those transactions is derived from gross receipts that are:
 - (1) derived from sales to the United States government, to the extent the state is prohibited by the Constitution of the United States from taxing that gross income;
 - (2) derived from commercial printing that results in printed materials, excluding the business of photocopying, that are shipped, mailed, or delivered outside Indiana.

In this case, Taxpayer was able to provide a proper exemption certificate for the project and the purchase of materials for the project. Taxpayer provided proof that the steel sheeting was used for an exempt federal government construction project. Thus, Taxpayer met its burden and its purchase of the steel sheeting is exempt from use tax.

B. Capital Assets.

The audit assessed use tax on capital assets purchased and placed into service. According to the audit report, due to the volume of purchases for the audit period and its representative nature, purchase invoices were reviewed for 2012. Purchases were found for which use tax was due because there were no receipts showing that sales tax was paid at the time of purchase; those taxable purchases were then totaled and divided by select purchases for 2012 to determine the error rate. The audit report went on to explain that the error rate was then multiplied by select amount purchases for 2011 to determine additional taxable purchases. The audit report notes that Taxpayer agreed with the projection method used. Taxpayer was able to provide some receipts for the auditor, in which the auditor removed those items from the assessment.

Taxpayer argues that it started a new division for construction projects and thus, the number of assets listed is not representative of a typical year. Taxpayer claims these items were purchased at big box stores where it does not have a corporate account and therefore, has no record of exemption. Furthermore, due to significant turnover in

Taxpayer's accounting department, it was not able to provide all receipts for all items the auditor deemed subject to use tax. Taxpayer claims it had provided receipts for roughly 25 percent of the items on the 2011 capital assets sheet, demonstrating a pattern that reflects the policy of purchasing small tools from big box stores and paying sales tax to the retailer at the time of the purchase.

Under IC § 6-8.1-5-4 Taxpayers "must keep books and records so that the department can determine the amount if any of the person's liability . . ." Thus, Taxpayer was required to keep the receipts to show that sales tax was paid at the time of purchase. However, since Taxpayer could not provide the necessary documents to show sales tax was paid, the assessment of use tax is correct. Taxpayer has not provided documentation to show that sales tax was paid on the capital purchases, thus the Department's assessment of the imposition of use tax on the capital assets was correct.

In summary, Taxpayer was able to provide documentation to show that the rental purchase of steel sheeting was exempt from sales/use tax. A supplemental audit will adjust the assessment. Taxpayer however, could not provide receipts to show that it paid sales tax on capital assets it purchased; therefore, its protest on the imposition of use tax on capital assets is denied.

FINDING

Taxpayer's protest is sustained in part and denied in part.

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