

**Letter of Findings: 04-20150017
Gross Retail Tax
For the Years 2011, 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication another document in the Indiana Register.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 Truck and Equipment Dealer was not entitled to purchase diesel fuel exempt from sales tax. Dealer purchased the fuel for its own use, did not resell the fuel to its customers, and was not engaged in the production of agricultural commodities.

ISSUES

I. Gross Retail Tax - Diesel Fuel Purchases.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-5 et seq.; IC § 6-2.5-5-2; IC § 6-2.5-5-8(b); IC § 6-8.1-5-1(c); 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); Mynsberge v. Dep't of State Revenue, 716 N.E.2d 629 (Ind. Tax Ct. 1999); Tri-States Double Cola Bottling Co. v. Dep't of State Revenue, 706 N.E.2d 282 (Ind. Tax Ct. 1999); Dep't of Revenue, State of Ind. v. Kimball Intern., Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988).

Taxpayer argues it was not required to pay sales tax when it bought diesel fuel which was used in the trucks and tractors it sold to its customers.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of selling agricultural and construction equipment. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's sales/use tax returns along with its business records. The audit resulted in an assessment of additional tax. Taxpayer disagreed with the assessment and submitted a protest to that effect.

An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Gross Retail Tax - Diesel Fuel Purchases.

DISCUSSION

The Department's audit found that Taxpayer had purchased "off road" diesel fuel without paying sales tax or self-assessing use tax. Taxpayer bought the fuel for use in the tractors, combines, and excavators it sold. The audit determined that the fuel was used to "demonstrate to [its] customers how the equipment works." The audit concluded that the fuel was "incidental to the purchase of the equipment and is not separately negotiated from the equipment price." In addition, the audit noted that Taxpayer "does not separately negotiate or pay a charge with respect to the fuel placed into the customer's equipment [and] it's not resold with the equipment and is subject to use tax."

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 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). 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, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-5 et seq. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-1-2; IC § 6-2.5-4-1. A complementary 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. IC § 6-2.5-3-2.

In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." Dep't of Revenue, State of Ind. v. Kimball Intern., Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

IC § 6-2.5-5-2 like all tax exemption provisions, is strictly construed against exemption from the tax. Tri-States Double Cola Bottling Co. v. Dep't of State Revenue, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); Mynsberge v. Dep't of State Revenue, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999).

Taxpayer suggests that the diesel fuel is inherent and incidental to the sales of its equipment. Taxpayer presumably relies on IC § 6-2.5-5-8(b) which states:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

The Department is unable to agree that Taxpayer has met its burden of establishing that it resold the diesel fuel to its customers. As noted in the audit report, Taxpayer did not charge its customers for the diesel fuel, and Taxpayer did not negotiate with its customers to include the cost of the diesel fuel along with the sale price of the equipment.

Taxpayer also suggests that its purchase of the fuel was exempt because the fuel was used in agricultural equipment such as tractors and combines. Taxpayer does not specifically cite to any statutory authority, but Taxpayer presumably relies on IC § 6-2.5-5-2 which states in part as follows:

(a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production

The Department does not agree that Taxpayer has met its burden of establishing that it is entitled to the exemption because Taxpayer is not occupationally engaged in the production of food or commodities which he sells for "human or animal consumption" Taxpayer may indeed sell equipment to customers who are entitled to claim the exemption, but Taxpayer - as a truck, equipment, and tractor dealer - is not.

FINDING

Taxpayer's protest is respectfully denied.

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