

Letter of Findings Number: 04-20150609
Sales and Use Tax
For Tax Years 2012-2014

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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 the Letter of Findings.

HOLDING

Retail Merchant provided eleven properly executed exemption certificates to show that the corresponding assessments of sales tax are incorrect. Retail Merchant could not provide sufficient documentation to show that purchases from Vendor were exempt. Finally, Retail Merchant provided additional invoices to show that sales tax was paid at the time of purchase.

ISSUES

I. Sales/Use Tax - Assessment.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-1; IC § 6-2.5-5; IC § 6-2.5-3-2; [45 IAC 2.2-8-12](#); 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, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974).

Taxpayer protests the Department's proposed assessments of sales/use tax.

II. Tax Administration - Imposition of Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a retail merchant doing business in Indiana. Taxpayer sells machinery and equipment to customers and also operates a repair shop. In 2014, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit for 2012, 2013, and 2014 tax years. Both Taxpayer and the Department agreed to utilize a statistical sample method to project the audit result. Pursuant to the audit, the Department determined that Taxpayer did not collect and remit sales tax on certain retail transactions. The Department also assessed use tax on items in which Taxpayer should have paid sales tax at the time it purchased the items. The Department thus imposed additional sales and use tax for the tax year at issue, as well as penalties for all three years at issue.

Taxpayer protested the assessment of sales and use tax. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales/Use Tax - Assessment.

DISCUSSION

Taxpayer's protest consists of three issues: 1) collection of sales tax on items in which Taxpayer had exemption certificates; 2) use tax assessed on purchases from Vendor in which the purchased items are used for Taxpayer's business which taxpayer argues is exempt; and 3) use tax assessed on capital assets purchased in which sales tax was paid 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.

A. Exemption Certificates

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. The relevant regulation is [45 IAC 2.2-8-12](#)(b) which states, "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." The regulation cautions, in relevant part 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 to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. . . ." [45 IAC 2.2-8-12](#)(d).

During the audit, Taxpayer was unable to provide proper exemption certificates for the thirteen transactions where sales tax was not collected from its customers. The auditor was therefore unable to verify that those sales were exempt from the sales tax. During the protest process Taxpayer protested these thirteen transactions. Taxpayer was able to provide eleven properly executed exemption certificates; two of those eleven certificates covered more than one transaction. Thus, the thirteen transactions are exempt. Taxpayer has met its burden as defined under, IC § 6-8.1-5-1 (c). Taxpayer shall be sustained for the sales tax on these thirteen transactions.

B. Exempt Purchases from Vendor

Next, Taxpayer argues that the purchase of fluids, such as diesel fuel, antifreeze, kerosene, and oil, from Vendor are used for items in inventory and for the repair shop are exempt for two reasons. The first reason Taxpayer proposes is that the items in inventory and/or the repair shop are exempt farming equipment so the fluids purchased would be exempt. Taxpayer's second reason is that the fluids in inventory items or the repair shop items are going towards "the end product by Taxpayer."

Indiana imposes a 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). Indiana also has a list of exemptions to sales tax under IC § 6-2.5-5. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Id. at 101 (quoting Conklin v. Town of Cambridge City (1877), 58 Ind. 130, 133).

While the fuel and other fluids purchased from Vendor for items in inventory become part of the item being sold, the purchase from Vendor is incidental to Taxpayer's business. Taxpayer does not charge its customers for the fuel or fluids separately. In addition, Taxpayer is not the end user of the products. Taxpayer has not shown that it qualifies for any exemption under IC § 6-2.5-5, nor has Taxpayer provided specific exemptions it qualifies for under IC § 6-2.5-5

For repair shop items, Taxpayer uses the fuel and fluids to assist with repairing items. Taxpayer will often fill a tractor with fuel to drive it and try to determine what is wrong with it. However customers are not charged for fuel or other fluids purchased by Taxpayer. Taxpayer's purchase of fluids from Vendor is part of its business practice and does not qualify for any exemption listed under IC § 6-2.5-5. Thus, Taxpayer has not met its burden under IC § 6-8.1-5-1(c).

C. Capital Assets Purchased

As stated above, Indiana imposes a 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).

During the hearing process Taxpayer explained that the previous accountant had improperly grouped certain capital asset purchases; therefore, multiple assessments that were part of this group purchase did not have a

single corresponding invoice for the group assets. Taxpayer provided six exhibits labeled A-F. Taxpayer corresponded each exhibit to an assessed item in the audit report (Exhibit E has six assessed items). Taxpayer also provided book entries that showed how some of the items were grouped.

In reviewing Taxpayer's documents it is clear that all the exhibits, except for E, correspond with the proper assessed amount and description in the audit report. After matching the invoices to the assessed amount in the audit report, the invoices were determined to show that sales tax was paid at the time of purchase. Exhibit E however could not be calculated to reflect the invoices provided nor could the descriptions be matched. Thus, sales tax is still due on the items listed in Exhibit E.

D. Summary

For issue A, Taxpayer was able to provide proper ST-105 exemption certificates and AD-70s to show that the thirteen items marked in the audit report were exempt purchases. Thus, Taxpayer is sustained for items protested in issue A. For issue B, Taxpayer could not point to specific law or provide sufficient documentation to show that purchases from Vendor were exempt, thus Taxpayer's protest items in B, are denied. Finally, for issue C, Taxpayer was able to provide some invoices to show that sales tax was paid at the time of purchase for items listed in Exhibits A-D and F. Taxpayer could not provide information to show that the invoices for Exhibit E corresponded to the audit report. Thus, for issue C, Taxpayer is sustained in part and denied in part.

FINDING

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

II. Tax Administration - Imposition of Negligence Penalty.

DISCUSSION

Taxpayer also protested the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has affirmatively established that its failure to remit sales tax and pay use tax on items was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c).

FINDING

Taxpayer's protest is sustained.

SUMMARY

Taxpayer is sustained in part and denied in part for Issue I. Taxpayer is sustained for Issue II.

Posted: 05/25/2016 by Legislative Services Agency
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