

## DEPARTMENT OF STATE REVENUE

04-20150610.LOF

**Letter of Findings Number: 04-20150610**  
**Indiana 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 limited partnership was not responsible for use tax on purchase of labor and services nor where sales tax was paid at the time of purchase.

**ISSUE****I. Use Tax - Imposition.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-8.1-5-1; Indiana Dept. 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); 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); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#); [45 IAC 2.2-4-2](#).

Taxpayer protests the assessment of use tax on certain purchases.

**STATEMENT OF FACTS**

Taxpayer, an Indiana limited partnership, provides contracting and maintenance services for various customers. Taxpayer was subject to an Indiana sales and use tax audit for the tax period beginning June 1, 2012 through December 31, 2014. As a result of the audit, the Indiana Department of Revenue ("Department") assessed additional use tax on certain of Taxpayer's purchases.

Taxpayer timely protested the Department's assessment and an Administrative Hearing was held. This Letter of Findings results. Further facts will be supplied as required.

**I. Use Tax - Imposition.****DISCUSSION**

Pursuant to the audit, the Department assessed additional use tax on certain of Taxpayer's purchases. Taxpayer argues that many of these purchases were for labor or services and are not subject to sales or use tax. Taxpayer also argues that sales tax was paid on some of the assessed purchases and thus should not be subject to use tax.

All tax assessments are prima facie evidence that the Department's claim for the 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 Dept. 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 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). 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).

Indiana also imposes a complementary 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 the 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). Tangible personal property purchased in a retail transaction is subject to use tax when the tangible personal property is "stored, used, or otherwise consumed in Indiana . . . unless the Indiana state gross retail tax has been collected at the point of purchase." [45 IAC 2.2-3-4](#). When sales tax is not paid as a part of a retail transaction, use tax will be imposed unless the purchase is eligible for an exemption.

When Taxpayer initially protested the sales and use tax audit, the focus of its protest were the results of the audit of equipment rentals. However, at the time of the hearing, Taxpayer conceded to those results. Thus, Taxpayer's protest of equipment rental is deemed withdrawn because the issue is moot.

Instead, Taxpayer pursued a protest of thirteen purchases determined to be taxable as a result of the audit. Taxpayer claims that many of these purchases were for labor or services alone and are thus not taxable under [45 IAC 2.2-4-2](#). Taxpayer argues that sales tax was paid on the remainder of these purchases, and thus should not be subject to use tax. In support of its protest, Taxpayer provided invoices, contracts and receipts. Upon review of these items, the Department agrees that these 13 purchases should not be subject to use tax.

As such the file will be sent back to supplemental audit and the results of the audit will be adjusted for the findings presented in this decision.

#### **FINDING**

Taxpayer's protest of the 13 purchases is sustained.

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An [html](#) version of this document.