DEPARTMENT OF STATE REVENUE

04-20160008.SLOF

Supplemental Letter of Findings Number: 04-20160008
Use Tax
For Tax Years 2012-14

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Business was able to produce documentation and explanation showing that two items were exempt from sales and use taxes. Those items will be removed from the Department's calculations of use tax due.

ISSUE

I. Use Tax–Agricultural Exemption.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-2; IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Graham Creek Farms v. Ind. Dept. of State Revenue, 819 N.E.2d 151 (Ind. Tax 2004); 45 IAC 2.2-3-4.

Taxpayer protests the imposition of use tax on two items.

STATEMENT OF FACTS

Taxpayer is an Indiana business involved in direct agricultural production of grain and cattle as well as retail sales of agricultural-related items. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on all items of tangible personal property ("TPP") which it purchased during the tax years 2012, 2013, and 2014. The Department therefore issued proposed assessments for use tax, penalty, and interest for those years. Taxpayer protested the proposed assessments and an administrative hearing was held. The Letter of Findings sustained Taxpayer's protest in part and denied the protest in part. Taxpayer requested a rehearing regarding the denial of its protest regarding two items. The Department granted the request for rehearing and this Supplemental Letter of Findings results. Further facts will be supplied as required.

I. Use Tax–Agricultural Exemption.

DISCUSSION

Taxpayer protests the imposition of use tax on two purchases of TPP it made during the 2012-14 tax years. The Department determined that Taxpayer had purchased the two items of TPP during those years but had not paid sales tax at the time of purchase. The original Letter of Findings reached the conclusion that one of the two items did not qualify for any exemptions from sales and use taxes and the other one was only partially exempt. Taxpayer states that both items wholly qualified for the agricultural exemption.

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 Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. 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, all interpretations of Indiana tax law contained within this decision, as

well as the preceding audit, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

> (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
> (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, 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.

Use tax is imposed by IC § 6-2.5-3-2(a), which states:

> An 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, regardless of the location of that transaction or of the retail merchant making that transaction.

45 IAC 2.2-3-4 further explains:

> Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction, unless there is an applicable exemption available.

Also of relevance is IC § 6-2.5-5-2, which states:

> (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; and
> (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.
> (Emphasis added).

In the course of the rehearing process, Taxpayer was able to establish that the two items in question, a grain cart and a skid loader, were used in direct agricultural production. The grain cart hauled the grain as it was being harvested in the fields. The cart also had an auger which, while still in the fields, loaded the grain onto the over-the-road trucks used to take the grain to market. The skid loader was used to move cattle manure and bedding for the cattle. Regarding livestock bedding, the Indiana Tax Court in Graham Creek Farms v. Ind. Dept. of State Revenue, 819 N.E.2d 151 (Ind. Tax 2004) explained, "The Department does not dispute that the bedding is used in the process of producing marketable turkeys." Id. at 157. Therefore, as provided by IC § 6-2.5-5-2(b)(3) and as explained by the court in Graham Creek Farms, both the grain cart and the skid loader were wholly directly used in agricultural production and both are wholly exempt from sales and use taxes.

In conclusion, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c) of proving a proposed assessment wrong regarding the grain cart and the skid loader. The Department will conduct a supplemental audit incorporating the results of this Supplemental Letter of Findings along with the results of the initial Letter of Findings in this case. The supplemental audit will result in a new, lower amount of use tax due for the tax years. The Department will then issue revised billings for the revised amount of use tax.

FINDING

Taxpayer's protest is sustained.

Posted: 03/29/2017 by Legislative Services Agency
An html version of this document.