

**Supplemental Letter of Findings Number: 04-20150209**  
**Sales/Use Tax**  
**For Tax 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

### **HOLDING**

Contractor subsequently provided additional supporting documentation pursuant to a rehearing request. A supplemental audit review is requested.

### **ISSUE**

#### **I. Sales/Use Tax - Imposition.**

**Authority:** IC § 6-8.1-5-1; 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); Letter of Findings 04-20150209 (September 2016).

Taxpayer protests the Department's proposed assessments on sales and use tax.

### **STATEMENT OF FACTS**

Taxpayer, an Indiana S corporation, is an electrical and mechanical contractor doing business in Indiana and outside of Indiana. Taxpayer performs construction work and charges its customers on either a "lump sum (non-time and materials)" basis or "time and material" basis. Taxpayer also provides repair services, equipment rental, power services, energy management, and various maintenance services. In addition to an Indiana Retail Merchant Certificate, Taxpayer has an Indiana Direct Payment Permit.

In 2014, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit of Taxpayer's business records and tax returns for 2011, 2012, and 2013 tax years. Pursuant to the audit, the Department found that Taxpayer failed to maintain adequate records, including source documentation such as general ledger reports, to determine if the sales tax and use tax were properly remitted to the Department. The audit concluded that Taxpayer failed to collect and remit sales tax on certain transactions in which Taxpayer transferred tangible personal property to its customers. The Department's audit also assessed use tax on the grounds that Taxpayer did not pay sales tax or self-assess and remit the use tax on certain purchases of tangible personal property, which Taxpayer used for its business.

Taxpayer protested the assessments of sales tax and use tax and submitted additional documents in support of its protest. Letter of Findings 04-20150209 (September 2016) ("LOF"), 20161130 Ind. Reg. 045160514NRA, sustained Taxpayer's protest in part and denied it in part. The LOF agreed that Taxpayer provided sufficient documents to show that it paid sales/use tax on two asset purchases (Asset Number 85645, partially, and Asset Number 604, fully). The LOF also sustained Taxpayer's protest on the assessment of sales tax subject to a supplemental audit verification of its sales records. The LOF however denied the remainder of Taxpayer's protest. Taxpayer subsequently submitted additional documentation to support its rehearing request. This Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

#### **I. Sales/Use Tax - Imposition.**

### **DISCUSSION**

The LOF denied Taxpayer's protest of imposition of use tax. The Department assessed Taxpayer additional use tax on two grounds: (1) the audit found that Taxpayer failed to pay sales tax or self-assess use tax on several capital assets it purchased and used in performing jobs and (2) the audit determined that Taxpayer failed to remit

use tax on purchases of materials which it claimed it used to perform lump sum (non-time and materials) contracts for improvement of realty without properly signed exemption certificates to support the purchases.

Taxpayer disagrees with the LOF which found that it was liable for the use tax. Taxpayer offered additional documents, including properly signed AD-70s, to support its rehearing request. This Supplemental Letter of Findings incorporates the relevant facts as well as applicable law established in the LOF.

As mentioned in the LOF, Taxpayer here bears the burden of proving that the proposed assessment is wrong because all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid. 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).

In this instance, after review of its supporting documentation provided, including but not limited to, information of exempt jobs, Taxpayer has demonstrated that some of its customers were entitled to purchase material exempt from the Indiana sales or use tax. Thus, Taxpayer was not responsible for paying use tax on certain materials it purchased and used in performing exempt jobs. Thus, subject to the Department's supplemental audit review, Taxpayer's protest of the use tax on its purchase of materials for exempt jobs is sustained.

Similarly, Taxpayer further offered additional documentation, including purchase agreements and payments, to support its use of certain equipment was not subject to additional Indiana sales or use tax. Thus, subject to the Department's supplemental audit review, Taxpayer's protest of the use tax on its purchase of capital assets is sustained.

### **FINDING**

Pending the supplemental audit's verification, Taxpayer's protest of sales tax and use tax is sustained to the extent that the supplemental audit revises the sales and use tax assessment; otherwise, Taxpayer's protest is respectfully denied.

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