

DEPARTMENT OF STATE REVENUE

04-20160536.LOF

Letter of Findings Number: 04-20160536
Use Tax
For Tax Years 2013-2014

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

HOLDING

Hotel provided documentation to show that reference number 1NS2012229 was a quote for multiple purchases rather than the actual invoices, and therefore the assessment of use tax was incorrect. Hotel did not provide documentation to show that it was entitled to additional use tax credits.

ISSUE

I. Use Tax-Imposition.

Authority: IC § 6-2.5-3-2; IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-3-4; Dep't 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); [45 IAC 2.2-3-4](#).

Taxpayer protests the assessment of use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana hotel. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the years 2013 and 2014. The Department determined that Taxpayer had not paid sales or use tax on some transactions during the audit period. The Department therefore issued proposed assessments of sales and use tax. Taxpayer protested the imposition of use tax on certain transactions. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

I. Use Tax-Imposition.

DISCUSSION

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.'" Dep't 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.

The Department assessed tax on an invoice totaling \$46,696.81, which Taxpayer claims was a quote for all invoices with that Vendor. Taxpayer provided documentation to support its claim.

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 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 excise tax called the "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). In general, all purchases of tangible personal property are subject to sales and/or

use tax. An exemption from use tax is granted for transactions where sales tax was paid at the time of the purchase pursuant to IC § 6-2.5-3-4. [45 IAC 2.2-3-4](#) provides that, "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."

The Department assessed use tax for a transaction referenced by number 1NS2012229 pursuant to IC § 6-2.5-3-2. Taxpayer argues that the reference 1NS2012229 was a quote by the vendor not a separate invoice. Taxpayer stated that the quote contained multiple invoices upon which use tax was already paid or assessed. Taxpayer provided the full quote and was able to trace each transaction to its corresponding invoice that was already included in the Department's use tax sample. Thus, Taxpayer met its burden under IC § 6-8.1-5-1(c) by demonstrating that the reference 1NS2012229 was a quote rather than a separate invoice.

Taxpayer also protests the amount of use tax credit calculated by the Department during the audit. The Department credited Taxpayer \$13,758.71 in use tax paid for 2014 pursuant to [45 IAC 2.2-3-4](#). Taxpayer argued that it should be credited for \$19,521.41. Taxpayer only provided a list of the additional transactions stating that use tax was paid on each transaction. Taxpayer provided no documentation to show that it had paid sales or use tax on the transactions at issue. Thus, Taxpayer did not meet its burden of proving the Department's assessment regarding use tax credit incorrect. IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained for use tax assessed on reference number 1NS2012229. Taxpayer's protest is denied regarding the amount of use tax credited by the Department.

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