

**Letter of Findings: 04-20160665**  
**Use Tax**  
**For the Years 2013, 2014, and 2015**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

### **HOLDING**

Indiana Propane Gas Retailer was not entitled to a use tax exemption on propane tanks it purchased and leased to customers because the tanks were modified by Retailer prior to delivery and were provided in conjunction with other products and services.

### **ISSUE**

#### **I. Use Tax–Lease Exemption.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-1-21; IC § 6-2.5-5-8; IC § 6-8.1-5-1; IC § 26-1-2.1-103; 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 v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Rev. v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Conklin v. Town of Cambridge City, 58 Ind. 130 (1877); [45 IAC 2.2-5-15](#).

Taxpayer protests the imposition of use tax on its purchase of propane gas tanks and related supplies.

### **STATEMENT OF FACTS**

Taxpayer is an Indiana retailer in the business of selling propane gas for both residential and commercial customers. Taxpayer entered into lease agreements with customers in conjunction with its propane gas delivery services. Under the terms of the lease agreements, Taxpayer agreed to install, service, and maintain the tanks for the purpose of delivering propane gas to customers. For the tax years at issue, Taxpayer's customers were not permitted to purchase gas from any other distributors under the terms of the lease agreements.

The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records. As a result of the audit, the Department determined that Taxpayer owed additional use tax for the 2013, 2014 and 2015 tax years. The Department found that Taxpayer had made purchases on which sales tax was not paid at the time of purchase nor was use tax remitted to the Department, and issued proposed assessments for the additional use tax and interest due for the purchases.

Taxpayer protests the imposition of use tax on its purchase of storage tanks and related supplies. An administrative phone hearing was held, and this Letter of Findings results. Additional facts will be addressed below as necessary.

#### **I. Use Tax–Lease Exemption.**

### **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). Further, when an agency is charged with enforcing a statute, the courts defer to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by

another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

As an additional matter, Taxpayer has the burden of establishing that it is entitled to the sought after exemption. In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Rev. v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). A statute which provides a tax exemption 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 (citing *Conklin v. Town of Cambridge City*, 58 Ind. 130, 133 (1877)).

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 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 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. In certain circumstances, additional enumerated exemptions from sales and/or use tax are available.

The audit report found that, for the tax years 2013 through 2015, Taxpayer had purchased propane tanks, repair parts for propane tanks, and other miscellaneous supplies for the business for which it had not paid sales or use tax. Relevant to this protest, the audit report further found that the lease of the propane tanks did not meet all the conditions necessary for the lease exemption for gross retail tax to apply. The audit report reached this conclusion based upon the fact that Taxpayer charged a nominal annual rental charge for the tanks; the tanks were on customers' property for the convenience of Taxpayer to enable Taxpayer to sell propane gas to the customer; Taxpayer retained control of the tanks and related equipment and customers could not purchase propane from any other dealer; and customers were required to provide Taxpayer with access to the tanks at all times for the purpose of installing, servicing, maintaining or removing the tank and for the purpose of delivery of gas.

Taxpayer asserts that the tanks qualify for an exemption as leased property. Taxpayer argues that the lease agreements do constitute true leases, and that the audit report's finding to the contrary is erroneous. For purposes of Indiana tax law, the definition of "lease" or "rental" is found in IC § 6-2.5-1-21, which provides, in relevant part:

(a) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend . . . .

. . . .

(c) **The definition of "lease" or "rental" set forth in this section applies throughout this article, regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code ([IC 26-1](#)), or other provisions of federal, state, or local law.**

**(Emphasis added).**

Taxpayer cites to IC § 26-1-2.1-103(1)(q) to argue that the propane tank lease agreements do meet the statutory definition of a "lease." However, this statute is found under Title 26, Article 1, which is the uniform commercial code. IC § 6-2.5-1-21(c) explicitly states that the definition of "lease" under [IC 26-1](#) is not controlling for purposes of [IC 6-2.5](#).

With respect to the gross retail tax exemption applicable to leases, IC § 6-2.5-5-8(b) provides:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business **without changing the form of the property. (Emphasis added).**

The exemption is also addressed in [45 IAC 2.2-5-15](#), which further explains the requirements for application of the exemption:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property **in the form in which it is sold to such purchaser.**

(b) General rule. Sales of tangible personal property for resale, rental or leasing are exempt from tax if **all** of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

**(3) The property is resold, rented or leased in the same form in which it was purchased.**

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. **This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.**

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

**(3) The property must be resold, rented or leased in the same form in which it was purchased.**

**(Emphasis added).**

Taxpayer's lease of the tanks at issue do not satisfy the requirements of IC § 6-2.5-5-8(b) and [45 IAC 2.2-5-15](#) for the use tax lease exemption. Taxpayer does not lease the propane tanks to customers in the same form in which Taxpayer acquires the tanks. In order to make the tanks operable to its customers, Taxpayer stated that it must make additions and modifications to the tanks so that they may be connected to customers' residences or facilities, and Taxpayer provides these installation services. The audit report lists as taxable both the tanks themselves and the additional supplies needed to modify and service the tanks. Because the tanks and supplies are not leased to customers in the same form in which they were acquired, they do not meet the requirements for the lease exemption.

Taxpayer additionally does not satisfy all of the requirements for the lease exemption to apply because it adds value to the tanks through the rendition of services and additional goods. The lease agreements state that the propane tanks are for the purpose of allowing Taxpayer to deliver propane gas to its customers, and the lease agreements contain a provision addressing customers' purchase of fuel. Taxpayer also services and maintains the tanks. The requirement of [45 IAC 2.2-5-15\(c\)\(1\)](#) is not satisfied because Taxpayer provides these additional products and services in conjunction with the lease of the tanks. The fact that Taxpayer charges a fee for the lease of the tank in addition to the cost of propane delivery does not render the arrangement a "lease" for purposes of the use tax exemption under IC § 6-2.5-5-8.

Taxpayer has not met its burden under IC § 6-8.1-5-1(c) of showing that the Department's assessment was incorrect, and has not met its burden of showing that it qualifies for the sought after exemption. Therefore, Taxpayer's protest is denied.

## FINDING

Taxpayer's protest is respectfully denied.

*Posted: 05/31/2017 by Legislative Services Agency*  
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