

DEPARTMENT OF STATE REVENUE

04-20170018.LOF

Letter of Findings Number: 04-20170018
Sales Tax
For the 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Company provided exemption certificates to show that it was not required to collect sales tax for two transactions.

ISSUE

I. Sales Tax—Exemptions.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the Department's assessment of sales tax on items sold to two of its customers.

STATEMENT OF FACTS

Taxpayer is a manufacturer of truck parts operating in Indiana. Taxpayer sells to customers throughout the US and Canada. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that it had sold truck parts in Indiana without charging Indiana sales tax and without receiving exemption certificates. As a result, the Department assessed sales tax on these transactions. Taxpayer protested the assessment of sales tax on items sold to one of its customers. The Department conducted an administrative hearing, and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Sales Tax—Exemptions.

DISCUSSION

The Department notes that all tax assessments are presumed to be accurate and 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).

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1 . . . or that is described in any other section of IC § 6-2.5-4." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration."

IC § 6-2.5-9-3 sets out the responsibilities of a retail merchant:

An individual who: (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and (2) has a duty to remit state gross retail or use taxes (as described in [IC 6-2.5-3-2](#)) to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Taxpayer submitted additional documentation with its protest. The Audit division conducted a supplemental audit and agreed with all the protested items with the exception of items numbered 1, 2, 14, 49, 52, 54, 59, 62, 79, 88,

and 91-95. Taxpayer was given the opportunity to review the supplemental audit and protested items 49 and 79. Taxpayer provided exemption certificates for both items showing that it was exempt from collecting sales tax on those transactions. As a result of providing a properly completed exemption certificate in the form and manner prescribed by the Department, Taxpayer was not required to collect sales tax at the time of the sale pursuant to IC § 6-2.5-8-8(a). Thus, Taxpayer's protest of sales tax on the items sold to these particular customers is sustained.

FINDING

Taxpayer's protest is sustained.

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