DEPARTMENT OF STATE REVENUE

04-20150448.LOF

LETTER OF FINDINGS NUMBER: 04-20150448
Sales Tax
For Tax Years 2011-13

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 responsible for collecting sales tax on automobile sales resulting from mechanics liens. Therefore, the proposed assessment of sales tax was correct.

ISSUE

I. Sales Tax–Mechanics Liens.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-12; IC § 6-8.1-5-1; IC § 6-8.1-5-4; 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); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the imposition of sales tax on sales resulting from mechanics liens.

STATEMENT OF FACTS

Taxpayer is an Indiana vehicle towing business. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected sales tax on some taxable sales it made during the tax years 2011, 2012, and 2013. The Department therefore issued proposed assessments for sales tax, penalties, and interest for those years. Taxpayer protested the imposition of sales tax. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax–Mechanics Liens.

DISCUSSION

Taxpayer protests the imposition of sales tax on the auction sales of cars it towed and upon which it subsequently placed mechanics liens during the tax years 2011-13. The Department determined that Taxpayer was a retail merchant selling vehicles at auction during these years and so was required to collect and remit sales tax on those transactions. Taxpayer protests that it did not need to collect sales tax on the auction sales because it was not the owner of the vehicles.

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 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. (Emphasis added).

Next, IC § 6-2.5-4-12 provides:

> (a) A person is a retail merchant making a retail transaction when he sells tangible personal property at auction.
> (b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when:
> (1) he makes isolated or occasional sales of tangible personal property at auction;
> (2) the sales occur on the premises of the owner of the tangible personal property; and
> (3) the owner of the tangible personal property did not originally acquire that property for resale.

Under IC § 6-2.5-4-12, a person is a retail merchant making a retail transaction when he sells tangible personal property at auction. The Department considered that Taxpayer was a retail merchant making retail transactions when it sold the vehicles at auction and thus considered that Taxpayer needed to collect and remit sales tax on those transactions as provided by IC § 6-2.5-2-1(b).

Taxpayer argues that it was not responsible for collecting the sales tax on the vehicles sold through mechanics lien procedures. Taxpayer states that the Department misunderstood the title of one of its record-keeping accounts titled "Cars Sold" and that not all vehicles listed under that account were taxable sales. Taxpayer states that it did not own the vehicles at the time of the sales and therefore is not responsible for collecting sales tax.

Also, Taxpayer states that the vehicles sold at auction must be titled by the purchaser and so sales tax was paid at that time. Taxpayer argues that to require it to pay the sales tax as a retail merchant would result in double taxation. Additionally, Taxpayer states that it would salvage some vehicles and sell the parts rather than the whole vehicle. This, Taxpayer argues, relieved it of the burden of collecting sales tax on the sale of the vehicle. Finally, Taxpayer states that some vehicles would be sold for scrap value by weight. This, Taxpayer believes, resulted in a non-taxable transaction.

The Department notes that Taxpayer has not provided sufficient documentation to establish which vehicles were sold at auction and which were purchased pursuant to IC § 9-22-6-2(g). Also, the Department's audit acknowledged that Taxpayer did remit some sales tax during the tax years at issue. Taxpayer's documentation does not explain which transactions had sales tax remitted and which did not.

Further, Taxpayer has not provided sufficient documentation to establish that it was not selling tangible personal property ("TPP") at auction. The Department notes that the exception to the auction rule established under IC § 6-2.5-4-12(a) is found under IC § 6-2.5-4-12(b) and that it requires all three listed criteria be met in order for a seller to qualify for the exemption. Taxpayer has not provided sufficient documentation to establish that it met all three criteria listed under IC § 6-2.5-4-12(b).

Next, the Department does not agree with Taxpayer's argument regarding double taxation. Taxpayer states that the purchaser could not title the vehicle without paying sales tax at the time of titling. This, Taxpayer argues, confirms that sales tax was paid on the transactions at issue. However, the Department notes that sales tax is a transactional tax and that the same TPP could be sold many times and that each sale could be subject to sales tax. This is precisely the reason that retail merchants are required to collect and remit sales tax on any transaction they conduct under IC § 6-2.5-2-1. Also, IC § 6-8.1-5-4(a) states:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

As explained in the audit report and as confirmed in the protest process, Taxpayer did not keep records in sufficient quantity and quality to meet the requirements of IC § 6-8.1-5-4(a) regarding its duties as a retail merchant in the case of vehicle sales. Taxpayer has not established that tax was paid twice on a single transaction.

In conclusion, Taxpayer has not provided sufficient documentation to establish that it was not responsible for

collecting sales tax on the sales of vehicles for the tax years at issue. Taxpayer also included a protest of the imposition of use tax on certain purchases it made as a consumer during the tax years, however Taxpayer provided neither documentation nor a detailed analysis of those transactions. Therefore, Taxpayer has not presented a sufficiently developed argument for the Department to address. See Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480, 485 n.9, (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)). Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessments wrong.

FINDING

Taxpayer's protest is denied.

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