

**Final Order Denying Refund: 04-20170206R  
Gross Retail 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 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Final Order Denying Refund.

### HOLDING

Individual could not provide sufficient documentation to show that she was exempt from collecting and remitting sales tax on her sales. Therefore, Individual was correctly assessed sales tax.

### ISSUE

#### **I. Gross Retail Tax - Collection and Remittance of Sales Tax.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-9-3; IC § 6-8.1-5-4; IC § 6-8.1-5-1; IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-1-5; *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); [45 IAC 2.2-2-1](#).

Taxpayer argues that the Department erred when it determined that Taxpayer failed to remit sales tax on certain transactions.

### STATEMENT OF FACTS

Taxpayer sells product on behalf of a multinational corporation. Taxpayer was advised to register as a retail merchant and remit sales tax for 2013-2015. Taxpayer however determined that she improperly remitted sales tax and requested a refund from the Indiana Department of Revenue ("Department"). The Department denied Taxpayer's request because, "The supporting documentation you submitted does not substantiate the basis of your claim for refund." Taxpayer protested the Department's denial. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for her protest. This Final Order Denying Refund results. Further facts will be supplied as required.

#### **I. Gross Retail Tax - Collection and Remittance of Sales Tax.**

### DISCUSSION

As a threshold issue, it is 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 preceding refund denial, shall be entitled to deference.

Indiana imposes a sales tax on retail transactions made *in Indiana*. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible person property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

A retail merchant, such as Taxpayer, is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(a). The retail merchant "must keep books and records so that the department can determine the amount, if any, of the [retail merchant's] liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). Additionally, the retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." IC § 6-2.5-9-3.

During the hearing, Taxpayer explained that she was given advice from a tax preparer that since she sells products she is required to register as a retail merchant and collect and remit sales tax pursuant to IC § 6-2.5-2-1. Taxpayer explained that she orders in bulk from the wholesaler and then sells the product to individual customers. Taxpayer claimed that she pays sales tax to the wholesaler and the wholesaler then remits sales tax to Indiana. Taxpayer went on to state that she did charge sales tax to her customers but the sales tax was "built into the price" of the product. However, this is not allowed pursuant to IC § 6-2.5-1-5(b). Taxpayer also claimed that because she is a consultant she was not required to register as a retail merchant and therefore, not required to remit sales tax. Taxpayer raised several legal arguments however she failed to provide documentation, such as proof she paid sales tax to wholesaler, or that she returned the collected sales tax collected from her customers. Thus, the Department cannot determine that Taxpayer was not required to remit sales tax pursuant to IC § 6-2.5-2-1.

### **FINDING**

Taxpayer's protest is denied.

*Posted: 10/25/2017 by Legislative Services Agency*  
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