

DEPARTMENT OF STATE REVENUE

04-20170128.LOF

Letter of Findings Number: 04-20170128
Sales/Use Tax
For Tax Years 2012-2015

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

Dealership sold vehicles at an auction to other dealerships but did not have Resale Certificate of Exemption forms to that effect. Dealership had other documentation that established the sales were exempt as sales for resale. The applicable Information Bulletin states that the auction company has the responsibility for collecting, reporting, and remitting the tax.

ISSUE**I. Sales/Use Tax–Auction Sales.**

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-4-12; IC § 6-2.5-5-8; IC § 6-8.1-10-1; *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); Sales Tax Information Bulletin #20.

Taxpayer protests the imposition of sales tax on vehicles.

STATEMENT OF FACTS

Taxpayer, a retail merchant, rents and sells vehicles. Taxpayer is registered for sales and use tax and also for motor vehicle rental tax. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the years 2012 through 2015. As a result of the audit, the Department issued proposed assessments. Taxpayer filed a protest regarding the proposed assessments. An administrative hearing was held, and this Letter of Findings ("LOF") results. Additional facts will be provided below.

I. Sales/Use Tax–Auction Sales.**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 audit, shall be entitled to deference.

In Indiana 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), a person is a retail merchant making a retail transaction when he sells tangible personal property at auction, and IC § 6-2.5-4-12(b) provides for the exception to subsection (a).

Taxpayer states in its March 6, 2017, protest letter that four specific proposed liabilities are being protested (Taxpayer also attached copies of the liabilities to the protest letter). Taxpayer's protest letter asserts:

The records of [Taxpayer] that were provided to the Department do not support the Departments findings. As such, [Taxpayer] is protesting the entire Proposed Assessments as not accurately reflecting the corporate records.

Taxpayer then specifies what is in fact being protested:

In regards to the sales of the vehicles sold at the [Auction], said sales should be exempt from sales tax as they are sales between dealers. [Taxpayer] has sufficiently demonstrated that all of said sales at that auto auction are between dealers and thus these sales should be treated as exempt from sales tax.

At the hearing Taxpayer stated that the vehicles are sold at auction and thus the auction company would have the relevant documentation. After the hearing, Taxpayer followed-up its protest with an additional protest letter. In that correspondence, Taxpayer noted:

[O]ur argument at hearing was that all sales of automobiles from [Taxpayer] were exempt "dealer-to-dealer" sales at a dealer auction held by [Auction company]. Enclosed is a copy of the transaction reports showing the sale of all vehicles, by [Auction company], on behalf of [Taxpayer] during the relevant period.

Further, Taxpayer asserts that the auction company "is responsible for the sale and collection of all relevant tax documents and forms as [Taxpayer] does not have direct dealing with the purchaser. However, [Auction company's] auctions are all dealer-to-dealer and are not open to the general public." And finally Taxpayer focuses on the "sole issue"—"that the taxpayer was unable to provide exemption certificates for cars sold at auction." Taxpayer's argument is that the "exemption certificates are not obtainable by nor the legal responsibility of [Taxpayer]."

Regarding Taxpayer's "dealer-to-dealer" argument, IC § 6-2.5-5-8 states in relevant part:

- (a) As used in this section, "new motor vehicle" has the meaning set forth in [IC 9-13-2-111](#).
 - (b) *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.*
 - (c) The following transactions involving a new motor vehicle are exempt from the state gross retail tax:
 - (1) A transaction in which a person that has a franchise in effect at the time of the transaction for the vehicle trade name, trade or service mark, or related characteristics acquires a new motor vehicle for resale, rental, or leasing in the ordinary course of the person's business.
 - (2) A transaction in which a person that is a franchisee appointed by a manufacturer or converter manufacturer licensed under [IC 9-23](#) acquires a new motor vehicle that has at least one (1) trade name, service mark, or related characteristic as a result of modification or further manufacture by the manufacturer or converter manufacturer for resale, rental, or leasing in the ordinary course of the person's business.
 - (3) A transaction in which a person acquires a new motor vehicle for rental or leasing in the ordinary course of the person's business.
- (*Emphasis added*).

The Department has a "Resale Certificate of Exemption[:] Sales to a Licensed Vehicle, Trailer or Watercraft Dealer Only by an Indiana Automobile Auction or an Indiana Licensed Dealer" form (ST-105D). That form states in pertinent part:

This form is to be used only by an Indiana automobile auction or an Indiana dealer to reflect sales of motor vehicles . . . sold exempt from Indiana sales tax for the purposes of the "**resale**" exemption per I.C. 6-2.5-5-8.

The form explains the requirements for purchasers claiming the exemption, has various lines for relevant information, and states at the bottom of the form: "The Selling Auction or Selling Dealer must retain this form to document the exemption." Taxpayer argues that it does not have the exemption certificates, that the auction would have that information. The form anticipates that either party—the selling auction *or* the selling dealer—must retain the form. However, Sales Tax Information Bulletin #20 (September 2009), 20091125 Ind. Reg. 045090898NRA, states at **II. A.**:

All sales of vehicles . . . by a licensed auction company or auctioneer are subject to the Indiana sales tax if such auction is conducted at a site owned, leased, or provided by the auction house or auctioneer. All sales are subject to the Indiana sales tax unless the buyer presents a valid, fully executed exemption form to the auction house or auctioneer. Forms acceptable as proof of exemption are the ST-105D (purchases by licensed dealers for resale)

And further:

The responsibility to collect, report, and remit the sales tax to the Department of Revenue is that of the auction house or auctioneer for sales at an auction site owned, leased, or provided by the auction company or auctioneer or a third party.

See *also* Sales Tax Information Bulletin #20 (October 2015), 20151125 Ind. Reg. 045150410NRA. Thus the Information Bulletin states that the responsibility falls upon the auction house, which resolves the ambiguity on the form ST-105D as to who has the responsibility to retain the form. Although it is not clear from the form itself, a selling dealer would have the responsibility for retaining the ST-105D if a selling dealer was also conducting the auction, which is not the case here. The auction company at issue is a wholesale vehicle auctioneer ("dealer-to-dealer" per Taxpayer) and has the responsibility regarding exemption certificates. Taxpayer provided documentation ("transaction reports") showing that it is the seller and that the various buyers also appear to be dealers. The documentation has the auction company's name at the top of it.

Taxpayer has met its burden of establishing that the *specific* sales at issue—i.e., the auction sales where documentation was provided as part of Taxpayer's June 1, 2017, follow-up correspondence—come within the scope of IC § 6-2.5-5-8(b) as sales for resale. The auction company, per Sales Tax Information Bulletin #20, has the "responsibility to collect, report, and remit the sales tax to the Department of Revenue." Regarding all other issues that comprise the remaining total amount of the proposed assessments, Taxpayer is denied for failure to meet its burden of proof pursuant to IC § 6-8.1-5-1(c) (for example, Taxpayer did not make or develop any arguments regarding use tax that was assessed). Lastly, the Department notes that interest cannot be waived pursuant to IC § 6-8.1-10-1(e).

FINDING

Taxpayer's protest is sustained in part and denied in part.

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