

Letter of Findings: 04-20170891
Gross Retail Tax
For the Year 2016

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Dealership failed to demonstrate that it did not have underreported sales and was not liable for the additional sales tax.

ISSUE

I. Gross Retail Tax - Imposition.

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; IC § 6-8.1-5-4; *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); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#).

Taxpayer protests, claiming that the Department erroneously assessed additional sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana "buy here pay here" used car dealership. The Indiana Department of Revenue ("Department") audited Taxpayer's business records and tax returns for the tax year 2016. The Department determined that Taxpayer had underreported its Indiana sales and that additional sales tax was due. The audit assessed additional sales tax, interest, and penalty.

Taxpayer protested the assessment of sales tax. An administrative hearing was held. This Letter of Findings results. Further facts will be provided as necessary.

I. Gross Retail Tax - Imposition.

DISCUSSION

The Department assessed additional sales tax because the audit found that Taxpayer had underreported its Indiana sales for the 2016 tax year.

Taxpayer disagreed with the audit's determination, claiming that the Department's assessment is overstated.

Indiana mandates that every person who is subject to a listed Indiana tax must keep books and records, including all source documents, "so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). "If the [D]epartment reasonably believes that a person has not reported the proper amount of tax due, the [D]epartment shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment." IC § 6-8.1-5-1(a). All tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; 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); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "Each assessment and each tax year stands alone."

Miller Brewing Co. v. Indiana Dep't of State Revenue, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Rev.* 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

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); [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). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for the state." *Id.*

When a purchaser claims the purchase "is exempt from the state gross retail [] tax[], [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). The "seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail [] tax on that purchase." *Id.* Otherwise, as an agent for the State of Indiana, the seller "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." IC § 6-2.5-9-3.

Additionally, 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 (internal citations omitted). In applying any tax exemption, "[t]he general rule is that tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

In this instance, Taxpayer asserted that the audit erroneously included a total amount of \$43,598 from its income statement and assessed sales tax on the following types of income.

Interest Income	\$ 23,523.59
Service Contract	\$ 1,151.00
Other Receivables Income	\$ 1,554.79
Income - Late Fees	\$ 2,695.00
Repair Sales	\$ 7,173.70
Other Income - Doc Prep Fee	\$ 7,500.00
<u>Total</u>	<u>\$ 43,598.08</u>

Taxpayer contended that the income recorded under those categories was not subject to sales tax because the income was not attributable to sales of vehicles. Taxpayer relied on a one-page summary of its "Income Statement" to support its protest.

Upon review, however, the Department is not able to agree that Taxpayer met its burden. Specifically, Taxpayer's "Income Statement" simply contained general descriptions of income without specific details. In other words, Taxpayer did not provide the verifiable source documents to support its contention. For example, transactions under "Repairs Sales" or "Service Contract" probably were subject to sales tax if they were unitary transactions and thus the income would have been subject to sales tax.

Another example, Taxpayer stated that it had "Interest Income." Conceptually, the Department recognizes that income listed under "Interest Income" category probably was not earned from sales of vehicles and probably was not subject to sales tax. However, Taxpayer did not provide the source documentation to substantiate that amount. Without verifiable supporting documents, Taxpayer's reliance on its "Income Statement" is misplaced.

In short, given the totality of the circumstances, in the absence of other verifiable supporting documentation, Taxpayer's "Income Statement" alone is not sufficient to demonstrate that the Department's assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied.

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