

**Letter of Findings: 04-20182496
Gross Retail and Use Tax
For the Year 2017**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Pickup Truck Owner failed to establish that he acquired ownership of the truck at no cost and that he should not have been assessed use tax on the fair market value of the vehicle.

ISSUE

I. Use Tax - Vehicle Transfer.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-3-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-3-2(b); IC § 6-2.5-3-6(d); IC § 6-2.5-5-15.5; IC § 6-8.1-5-1(c); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Sales Tax Information Bulletin 28S (May 2012).

Taxpayer argues that the Department erred in assessing him use tax on the transfer of ownership of a pickup truck from his wife's former business to himself as the new owner.

STATEMENT OF FACTS

Taxpayer is an Indiana individual. His wife's former business owned a 2008 Ford pickup truck. When Taxpayer's wife chose to close her business, Taxpayer arranged with the Indiana Bureau of Motor Vehicles ("BMV") to transfer ownership of the pickup truck from the former business to himself. Taxpayer reported that "no monies [were] exchanged so there was no actual purchase." Taxpayer explained that "I wanted to simply transfer the vehicle ownership from a closed business into my personal name."

In an undated letter, the Indiana Department of Revenue ("Department") informed Taxpayer that, after reviewing the transfer document, he was responsible for a proposed assessment of use tax. In its letter, the Department explained:

The transfer documentation show that you signed as both the seller and purchaser of the vehicle and that you have the same address as the selling firm. Further it appears that you are the spouse of the President of the selling firm. This relationship makes the transaction not arm's length and the price reported a misrepresentation of the value involved. The vehicle title instead should have been transacted and reported at fair market value The private party value listed for the vehicle at the reported mileage in good condition is \$9,000.00.

The Department issued Taxpayer a proposed use tax assessment of \$630. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for the protest. This Letter of Findings results.

I. Use Tax - Vehicle Transfer.

DISCUSSION

The issue is whether Taxpayer should be required to pay use tax on the "fair market" value of a vehicle he

transferred to himself from his wife's former business to himself as new owner of the vehicle.

Because Taxpayer was assessed use tax, it is the Taxpayer's responsibility to establish that the 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 Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In meeting that burden, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position 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). 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, interpretations of Indiana tax law contained within this decision, as well as the preceding audit reference, are entitled to deference.

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). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the tax on the transaction. IC § 6-2.5-2-1(b); [45 IAC 2.2-3-5\(b\)](#).

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). Use means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a).

More specifically and as to Taxpayer's pickup truck, IC § 6-2.5-3-2(b) states:

The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) Is acquired in a transaction that is an isolated or occasional sale; and
- (2) Is required to be titled, licensed, or registered by this state for use in Indiana.

In effect and practice, the use tax is generally functionally equivalent to the sales tax. See *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Taxpayer was assessed the \$630 in use tax on the ground that Taxpayer acquired a vehicle with a "fair market" value of \$9,000 not the \$0 Taxpayer originally reported.

The Department's Sales Tax Information Bulletin 28S (May 2012), 20120530-Ind.Reg.-045120259 NRA, states as follows:

Absent a statutory exemption, all sales of motor vehicles and trailers purchased in Indiana are subject to Indiana sales and use tax.

Indiana does recognize an exception for "inter familial" transfers of vehicles. The exception is found IC § 6-2.5-5-15.5 which provides:

A transaction involving a motor vehicle is exempt from the state gross retail tax, if:

- (1) the transaction consists of changing the motor vehicle title to add or delete an individual; and
- (2) the individual being added or deleted is the spouse, child, grandparent, parent, or sibling of an owner.

However, since Taxpayer is neither the "spouse, child, grandparent, parent, or sibling" of the former owner - his wife's company - the exemption is inapplicable.

Instead, the issue is addressed at IC § 6-2.5-3-6 and following:

(d) Notwithstanding subsection (c), a person liable for the use tax imposed in respect to a vehicle, watercraft, or aircraft under section 2(b) of this chapter shall pay the tax:

- (1) to the titling agency when the person applies for a title for the vehicle or the watercraft;

(2) to the registering agency when the person registers the aircraft; or

(3) to the registering agency when the person registers the watercraft because it is a United States Coast Guard documented vessel;

unless the person presents proof to the agency that the use tax or state gross retail tax has already been paid with respect to the purchase of the vehicle, watercraft, or aircraft or proof that the taxes are inapplicable because of an exemption under this article.

(e) At the time a person pays the use tax for the purchase of a vehicle to a titling agency pursuant to subsection (d), the titling agency shall compute the tax due based on *the presumption that the sale price was the average selling price for that vehicle, as determined under a used vehicle buying guide* to be chosen by the titling agency. However, the titling agency shall compute the tax due based on the actual sale price of the vehicle if the buyer, at the time the buyer pays the tax to the titling agency, presents documentation to the titling agency sufficient to rebut the presumption set forth in this subsection and to establish the actual selling price of the vehicle.

(Emphasis added).

Taxpayer argues that the vehicle transfer was at arm's length and that the fair market value of the vehicle was \$0. Taxpayer explains that "neither party was subject to any pressure or duress. There was no collusion or intent on behalf of either party to misrepresent the transaction in an effort to cause any harm or injustices to the Indiana DOR or the citizens of the state of Indiana."

In addition, Taxpayer maintains that the Department overstated the "fair market" value of the pickup truck. Taxpayer provided documentation purporting to establish the vehicle was originally acquired for \$8,700 and that it should not have been valued as being in "good condition."

However, the question raised in this protest is whether the Department erred in assessing use tax on the value of a vehicle that was transferred to him from his wife's former business to himself as the new owner. The Department did not; in the absence of any specific use tax exemption to the contrary, the transfer of ownership was clearly subject to Indiana's use tax. The Department did exactly what is required under the law. It followed the rule which states that "all sales of motor vehicles . . . are subject to Indiana sales and use tax" and calculated the amount of that tax based on "a used vehicle buying guide." The Department has no reason to attribute to Taxpayer any intent to deceive or deliberately avoid Indiana tax. However, in this case, both the Department and Taxpayer are bound by a simple and straightforward application of Indiana's sales and use tax provisions.

FINDING

Taxpayer's protest is respectfully denied.

March 29, 2019

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