

Letter of Findings: 04-20190953
Gross Retail and Use 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Manufacturer's purchase of a new model ATV qualified for the research and development gross retail and use tax exemption.

ISSUE

I. Gross Retail and Use Tax - Research and Development Property.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-5-40; IC § 6-8.1-5-1; *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); *Dept. 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); *Conklin v. Town of Cambridge City*, 58 Ind. 130 (1877); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002).

Taxpayer argues it was not required to pay sales or use tax on the purchase of certain equipment on the grounds that the equipment qualifies for the research and development sales tax exemption.

STATEMENT OF FACTS

Taxpayer is an Indiana company which designs and manufactures components and accessories for ATVs and UTVs sold by unrelated parties. In order to design and manufacture these components and accessories, Taxpayer purchases new model ATVs and UTVs released by these unrelated parties. Taxpayer measures, disassembles, and performs a variety of tests on the new models in order to determine what sort of components and accessories Taxpayer wants to design and develop for the new model. Examples of components and accessories designed and manufactured by Taxpayer include "front and rear a-arms, nerf bars, windshields, roof, front and rear bumpers, small and large lift kits, portal gear hubs, winch mounts, cargo boxes, roll-cage reinforcement systems, rear windows, and doors."

In April of 2019, Taxpayer purchased a new model ATV. When Taxpayer titled the ATV with the Indiana Bureau of Motor Vehicles ("BMV"), it submitted BMV Form ST-108E, Certificate of Gross Retail or Use Tax Exemption for the Purchase of a Motor Vehicle or Watercraft, indicating that the purchase was exempt from tax. The ST-108E allows taxpayers to indicate the reason the purchase is exempt from tax, however, these options are limited. Taxpayer believed its purchase of the ATV was exempt because it was purchased for research and development purposes, however, "research and development" is not an option on the ST-108E. Therefore, according to Taxpayer, "the agriculture exemption [was] what was chosen."

The Indiana Department of Revenue ("Department") reviewed Taxpayer's purchase, and notified Taxpayer that its "use of an agricultural exemption does not appear to apply." Thus, in a notice dated April 25, 2019, the Department assessed Taxpayer with use tax on its purchase. Taxpayer filed a timely protest asking that audit review the assessment. Taxpayer later waived its right to a hearing and asked that the Department issue a decision based on information previously provided to the Department. This Letter of Findings, therefore, is based on the information in the file and discussions held with Taxpayer. Additional facts will be supplied as necessary.

I. Gross Retail and Use Tax - Research and Development Property.**DISCUSSION**

Taxpayer purchased a new model ATV and when titling the ATV, selected the agricultural exemption option on the ST-108E. The Department reviewed the purchase and notified Taxpayer that the agricultural exemption did not appear to apply and thus assessed Taxpayer tax on the purchase. Taxpayer argues that the ATV was purchased for research and development, not agriculture, however, as research and development was not an option on the ST-108E, they chose agriculture instead.

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 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). Thus, a taxpayer is required to provide documentation explaining and supporting its 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 decision, 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). 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). In effect and practice, the use tax is 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).

However, under Indiana law, equipment and property used in research and development may be exempt from gross retail and use tax. IC § 6-2.5-5-40 (effective January 1, 2016) describes the exemption:

(a) As used in this section, "research and development activities" include design, refinement, and testing of prototypes of new or improved commercial products before sales have begun for the purpose of determining facts, theories, or principles, or for the purpose of increasing scientific knowledge that may lead to new or enhanced products.

...

(b) As used in this section, "research and development equipment" means tangible personal property that:

(1) consists of or is a combination of:

- (A) laboratory equipment;
- (B) computers;
- (C) computer software;
- (D) telecommunications equipment; or
- (E) testing equipment;

(2) has not previously been used in Indiana for any purpose; and

(3) is acquired by the purchaser for the purpose of research and development activities devoted directly to experimental or laboratory research and development for:

- (A) new products;
- (B) new uses of existing products; or
- (C) improving or testing existing products.

(c) As used in this section, "research and development property" means tangible personal property that:

(1) has not previously been used in Indiana for any purpose; and

(2) is acquired by the purchaser for the purpose of research and development activities devoted to experimental or laboratory research and development for:

- (A) new products;

- (B) new uses of existing products; or
- (C) improving or testing existing products.

(d) For purposes of subsection (c)(2), a research and development activity is devoted to experimental or laboratory research and development if the activity is considered essential and integral to experimental or laboratory research and development. The term does not include activities incidental to experimental or laboratory research and development.

Taxpayer explains that its purchase of the ATV was exempt because its use fell squarely within the requirements outlined in IC § 6-2.5-5-40. The Department notes that IC § 6-2.5-5-40, like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999). Indiana law has long held that "where [] 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." *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 101 (Ind. Ct. App. 1974) (citing *Conklin v. Town of Cambridge City*, 58 Ind. 130, 133 (1877)).

In this instance, Taxpayer explained and provided evidence that it purchased a new model ATV for the purpose of developing components and accessories for the ATV. All new model ATVs and UTVs Taxpayer purchases go through an extensive process of measuring the ATV, dismantling it, measuring and scanning its components, and then designing and developing accessories and components for the ATV. Prototypes of the accessories and components are developed and installed onto the ATV for testing, which "involves the operation of the ATV/UTV in multiple environments and riding conditions where data points and performance indicators are measured." This process leads to the development of a sample, which is again tested on the ATV, and a production run, which goes through a final test on the ATV before the product is made available for sale.

Taxpayer is performing research and development activities and the ATVs/UTVs it purchases are essential and integral to those activities. Without the ATVs/UTVs the activities simply cannot take place. Taxpayer purchases the ATVs/UTVs for research and development purposes only; they are not used in any other way. Therefore, the Department agrees with Taxpayer; its purchase was exempt from the gross retail tax and use tax under IC § 6-2.5-5-40. Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

November 15, 2019

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