

Letter of Findings: 04-20191401
Sales & Use Tax
For The Tax 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual was required to pay use tax based on the fair market value of the vehicle that he bought from his LLC. Moreover, Individual was not entitled to the exemption sought on the ST-108E Certificate of Gross Retail or use Tax Exemption.

ISSUE

I. Tax Administration - Use Tax.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-3-2; *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*, 897 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, (Ind. 2014); Black's Law Dictionary, (11th ed. 2019)

STATEMENT OF FACTS

Taxpayer is an individual Indiana resident. He purchased a vehicle in 2012 and paid sales tax on that transaction. In 2013 he sold the vehicle to his LLC, of which he is both the president and CEO, for \$1.00. In 2016 he purchased the vehicle back from the LLC. He signed the sale agreement on behalf of himself and the LLC. The Indiana Department of Revenue ("Department") made adjustments to the Taxpayer's return. The Department then assessed use tax based on the fair market value on the car in 2016. Thus, the Taxpayer protests the assessment. A hearing was conducted and this Letter of Finding results. Additional facts will be provided as necessary.

I. Tax Administration - Use Tax.

DISCUSSION

Taxpayer protests the proposed assessment of use tax based on the fair market value of the car he purchased from his LLC. Taxpayer indicated that he and the LLC are both one and the same, and because of that no use tax was due. Moreover, he completed a ST-108E Certificate of Gross Retail or use Tax Exemption and elected to take the exemption for an individual to individual sale. Individual contends that because no money was transferred in the sale, no tax is due. Taxpayer believes it would be double jeopardy to pay use tax on this purchase because he paid sales tax when he originally purchased the vehicle in 2012. He contends that he followed advice from his local BMV when buying the vehicle back from his LLC.

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 shall be entitled to deference.

IC § 6-2.5-3-2 in relevant parts provides guidance on use tax:

- (a) An excise tax, known as the use tax, is imposed 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.
- (b) 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.

[45 IAC 2.2-3-5](#) also provides guidance:

- (a) For purposes of the state gross retail tax and use tax, transactions representing isolated or occasional sales of vehicles required to be licensed by the state for highway use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in this act of a vehicle required to be licensed by the state for highway use in Indiana shall be deemed a retail transaction and the use of such vehicle shall be subject to the use tax which shall be paid by the purchaser to the Bureau of Motor Vehicles at the time of the licensing of the vehicle by the purchaser.*
- (b) The sale of any vehicle required to be licensed by the state for highway use in Indiana shall constitute selling at retail and shall be subject to the sales or use tax unless such purchaser is entitled to one or more of the exemptions as provided on form ST-108.
- (c) If the vehicle is purchased from a registered Indiana motor vehicle dealer, the dealer must collect the tax and provide the purchaser a completed form ST-108 showing that the tax has been paid to him; or if the purchaser claims exemption and no tax is collected by the dealer, the certificate at the bottom of form ST-108 must be completed and signed by the purchaser. Title applications on sales by registered dealers without a form ST-108, completed by the dealer, will not be accepted. The ST-108 must be attached to the revenue copy of the title application (TA) by the license branch. Whenever a purchaser claims exemption on the reverse side of form ST-108, the dealer must retain a completed exemption certificate.
- (d) On any vehicle which is not purchased from a registered Indiana dealer, the license branch must collect the use tax at the time of registration unless the purchaser is entitled to claim exemption from the tax for one of the reasons shown on the reverse side of the form ST-108. When the tax is collected by the license branch, a person will be required to have an affidavit signed under penalty of perjury by the seller that contains the actual selling price of the vehicle. However, in absence of an affidavit the buyer will be charged on the average selling price for that vehicle, as determined under a used vehicle guide. The affidavit would be attached to the title instead of an ST-108 in the situation above; however, in the absence of the affidavit the amount of the selling price, trade-in, and the amount subject to the use tax must be noted on the title application (TA) by the license branch.*
- (e) If the purchaser claims exemption on a vehicle not purchased from a registered dealer, the ST-108 must be completed by the customer or the license branch and attached to the revenue copy of the title application (TA) by the license branch. The ST-108 must show the specific paragraph under which the exemption is claimed, and be signed at the bottom of the form by the purchaser.*
- (f) Exemptions from the sales tax will not be allowed except for the reasons listed on the reverse side of the revised form ST-108.*
- (g) The dealer or license branch must collect sales tax in the usual manner from any purchaser claiming exemption from the sales tax for a reason other than those shown on the ST-108. The purchaser may apply for a refund of this tax from the Indiana Department of Revenue, Sales Tax Division.
- (h) The deduction for trade-in allowance applies only to vehicles traded-in and does not apply to other property, either personal or real, which is traded on a vehicle.
- (i) The assumption by the purchaser of an installment contract or other obligation on a vehicle is subject to the tax on the amount of the obligation plus any other consideration given

(Emphasis added)

Taxpayer claims that because he paid sales tax on the vehicle in 2012 that it is double jeopardy to pay tax on the present transaction. Double jeopardy is a criminal concept, but assuming he meant double taxation, use tax is still due. Sales tax is a transactional tax, which means that on every event, sales tax is due. The sale from Taxpayer to the LLC in 2013 was a transaction and the 2016 sale back to the Taxpayer was a transaction. Per evidence presented by the Taxpayer, the vehicle was acquired in an isolated sale and titled, licensed, and registered for use in Indiana. Since sales tax was not collected by the seller in 2016, use tax is due on the vehicle, as provided by IC § 6-2.5-3-2 and [45 IAC 2.2-3-5\(d\)](#).

To determine the amount we must look at the transaction. In this case, Taxpayer bought the car from LLC for \$0.00. An effective way to determine the value of an item is to determine its value in an arm's length transaction. An arm's length transaction is defined as "(1) a transaction between two unrelated and unaffiliated parties. (2) A transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises." Black's Law Dictionary 983 (11th ed. 2011). Because the transaction between taxpayer and his LLC fails the definition of an arm's length transaction the Department determined the fair market value of the vehicle and assessed it to the taxpayer.

While Taxpayer is the sole member of LLC, Taxpayer is not LLC. An LLC is "A statutorily authorized business entity that is characterized by limited liability for and management by its members and managers, and taxable as a partnership for federal income-tax purposes." Black's Law Dictionary (11th ed. 2011). Taxpayer and LLC are two different entities. Taxpayer is a person and LLC is a commercial enterprise that holds itself out to the public as a business. Taxpayer is an individual person and does not conduct the business of LLC. That is precisely why Taxpayer created the LLC, so not to avail himself to lawsuits based on the actions of his insurance company. Not only does this disallow the exemption claimed on the ST-108E, as it was an LLC to an individual, but it also undermines notion that the transaction was arm's length.

In conclusion, this is neither double jeopardy nor double taxation because [45 IAC 2.2-3-5](#) provides that each transaction stands alone. The transaction was not arm's length because it was not exposed to the market. Lastly, Taxpayer and LLC are distinct and separate entities. Thus, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is denied.

December 31, 2019

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An [html](#) version of this document.