

Letter of Findings: 04-20191521
Gross Retail Tax
For the Years 2014, 2015 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Although Indiana Truck Stop Business failed to retain or obtain sales tax exemption certificates from all of its customers, Truck Stop Business was able to meet its burden of establishing that certain of its fuel customers did indeed use diesel fuel for exempt public transportation purposes.

ISSUE

I. Gross Retail Tax - Diesel Fuel Sales.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-27; IC § 6-2.5-7-3; IC § 6-8.1-5-1(c); IC § 6-2.5-8-8; IC § 6-2.5-8-8(a); *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); [45 IAC 2.2-8-12](#); [45 IAC 2.2-8-12\(d\)](#); [45 IAC 2.2-8-12\(f\)](#).

Taxpayer argues that it sold diesel fuel to customers exempt from sales tax and the information Taxpayer has now provided is sufficient to establish each customers' exempt status.

STATEMENT OF FACTS

Taxpayer operates truck stops located in Indiana and other states. The truck stops sell gasoline, diesel fuel, bio-diesel fuel, and bulk propane. In addition, the truck stops sell convenience store items such as hot and cold drinks, cigarettes, tobacco, prepared food, and other such items. The truck stops also provide truckers laundry facilities, private showers, and ATM services.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns. Because of the large number of transactions, the audit performed a "statistical sampling" of diesel fuel sale transactions. In conducting the sample, the audit found that Taxpayer was unable to document that certain diesel fuel sales were made to customers who were exempt from tax. As a result, the Department issued proposed notices of additional sales tax.

Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Gross Retail Tax - Diesel Fuel Sales.

DISCUSSION

The issue is whether Taxpayer has established that the Department's assessment of additional sales tax is overstated on the ground that Taxpayer has now provided additional documentation verifying that certain sales of diesel fuel were sold to customers exempt from sales tax.

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 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, fn. 9 (Ind. Tax Ct. 2012).

In considering Taxpayer's argument, the Department bears in mind that "when [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 the audit and the 2017 LOF decision are entitled to deference.

Indiana imposes a gross retail (sales) tax on retail transaction and imposes on the vendor responsibility for collecting the tax. IC § 6-2.5-2-1 provides as follows:

- (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).

Exempt entities - such as certain transportation companies - may avoid paying the sales tax by presenting the vendor a valid exemption certificate. In such cases, the vendor is relieved of its responsibility from collecting the tax. IC § 6-2.5-8-8 in relevant part states:

- (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. *A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.*
- (b) The following are the only persons authorized to issue exemption certificates:
 - (1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;
 - (2) organizations which are exempt from the state gross retail tax under [IC 6-2.5-5-21](#), [IC 6-2.5-5-25](#), or [IC 6-2.5-5-26](#) and which are registered with the department under this chapter; and
 - (3) other persons who are exempt from the state gross retail tax with respect to any part of their purchases.
- (c) *The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt. (Emphasis added).*

[45 IAC 2.2-8-12](#) imposes certain limitations on the use of the exemption certificate and imposes on the vendor responsibility for either collecting the tax or obtaining the certificate.

- (a) Exemption certificates may be [issued] only by purchasers authorized to issue such certificates by the Department of Revenue. Retail merchants, manufacturers, wholesalers and others who must register with the Department of Revenue and who qualify to purchase exempt from tax under this Act [\[IC 6-2.5\]](#) may issue exemption certificates with respect to exempt transactions. All persons or entities not required to register with the Department as retail merchants, manufacturers, or wholesalers, and who are exempt under this Act [\[IC 6-2.5\]](#) with respect to all or a portion of their purchases are authorized to issue exemption certificates with respect to exempt transaction provided an exemption number has been assigned by the Department of Revenue, or provided that the Department of Revenue has specifically provided a form and manner for issuing exemption certificates without the need for assigning an exemption number.
- (b) *Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used by the purchaser for an exempt purpose.*
- (c) All retail sales of tangible personal property for delivery in the state of Indiana shall be presumed to be subject to sales or use tax until the contrary is established. The burden of proof is on the buyer and also on the seller unless the seller receives an exemption certificate.
- (d) *Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt*

purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. The mere filing of a Registered Retail Merchant Certificate number is not sufficient to relieve the seller of the responsibility to collect the sales tax or prove exempt use by the buyer.

(e) No exemption certificates are required for sales in interstate commerce, however, proper records must be maintained to substantiate such sales.

(f) An exemption certificate issued by a purchaser shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.

(g) An exemption certificate or other evidence supporting an exempt sale must be maintained by the seller for at least three (3) years after the due date of the tax return upon which such exempt transaction is reported.

(h) Exemption certificates may be reproduced provided no change is made in the wording or content.

(Emphasis added).

Therefore, as provided by IC § 6-2.5-8-8(a), a vendor such as Taxpayer accepting a valid exemption certificate has no duty to collect or remit the state gross retail or use tax on a purchase. However, as provided in [45 IAC 2.2-8-12](#)(f), an exemption certificate issued by a purchaser is not valid unless it is executed in the prescribed and approved form and unless all information requested on the form is completed.

IC § 6-2.5-7-3 (Effective: July 1, 2014 to June 30, 2017) specifically requires retail merchants who sell special fuel from metered pumps, such as Taxpayer and other retailers, to collect exemption certificates from their customers when they make exempt sales. In the absence of exemption certificates, the sales are deemed taxable:

With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with [IC 6-2.5-8-8](#), a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) seven percent (7[percent]).

Unless the exemption certificate is provided, the *retail merchant shall collect the state gross retail tax prescribed in this section* even if the transaction is exempt from taxation under [IC 6-2.5-5](#). *(Emphasis added).*

(Emphasis added)

The language of IC § 6-2.5-7-3 is clear in its requirement that Taxpayer collect exemption certificates documenting Taxpayer's exempt sales of diesel fuel. In instances in which the vendor has failed to collect or retain the certificates, [45 IAC 2.2-8-12](#)(d) requires Taxpayer to prove "that the purchaser actually used the [fuel] for an exempt purpose."

In this instance, Taxpayer has provided documentation sufficient to establish that the customers in question used the fuel for exempt purposes. Specifically, Taxpayer's documentation verifies that these customers are engaged in "public transportation" as specified at IC § 6-2.5-5-27 as follows:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

Taxpayer has met its burden under both IC § 6-8.1-5-1(c) and [45 IAC 2.2-8-12](#)(d). To the specific extent that Taxpayer has established that its diesel fuel customers are engaged in public transportation and are thereby exempt from Indiana sales tax on purchases of diesel fuel, Taxpayer's protest on this issue is sustained.

FINDING

Taxpayer's protest is sustained.

March 18, 2020

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