

Letter of Findings: 04-20200045
Sales and 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana use tax was due on Individual's purchase of a 2017 Polaris All-Terrain Vehicle in Indiana. Moreover, Individual did not provide sufficient evidence that the Polaris qualified for the agricultural exemption.

ISSUE

I. Use Tax - Agricultural Exemption.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-3; IC § 6-2.5-3-2; IC § 6-2.5-5-2; *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); *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520 (Ind. 1983); *Indiana Dept. of Revenue v. Kimball International, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-3-14](#).

Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

Taxpayer is an Ohio resident who purchased the 2017 Polaris in Indiana for use in Ohio. As a result of an audit for tax year 2016, the Indiana Department of Revenue ("Department") issued a proposed assessment for use tax on the 2017 Polaris. Taxpayer protested the imposition of use tax, an administrative hearing was held, and this Letter of Finding results. Additional facts will be provided as necessary.

I. Use Tax - Agricultural Exemption.

DISCUSSION

Taxpayer purchased a 2017 Polaris in Indiana in September 2016. Taxpayer informed the Indiana retail merchant that it was for farming use and the retail merchant did not charge Taxpayer sales tax. After the purchase, the Ohio Department of Taxation assessed tax on the Polaris. Taxpayer attempted to claim the agricultural exemption in Ohio, however Ohio's Department of Taxation disallowed the exemption. Later the Department assessed use tax on the purchased Polaris because, "Taxpayer had not provided documentation supporting that the purchase was exempt for agricultural use and that Taxpayer was engaged in agriculture as a farmer." Taxpayer requests that a tax credit be given in Indiana because sales tax was paid in Ohio. In the alternative, Taxpayer requests the Department seek a refund from Ohio's Department of Taxation. Regarding this portion of Taxpayer's argument, the Department notes that the liability at issue is Taxpayer's and that the Department properly issued the proposed assessment to Taxpayer. The State of Ohio is not a party in this matter.

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.

However, IC § 6-2.5-5-2 provides the following guidance in relation to the agricultural exemption:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for the person's direct use in the direct production, extraction, harvesting, or processing of agricultural commodities, and including material handling equipment purchased for the purpose of transporting materials into such activities from an onsite location.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which the person sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

Furthermore IC § 6-2.5-2-3 provides:

- (a) As used in this section, "motor vehicle" means a vehicle that would be subject to the annual license excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana.
- (b) Notwithstanding section 2 of this chapter, the state gross retail tax rate on a motor vehicle that a purchaser intends to:
 - (1) transport to a destination outside Indiana within thirty (30) days after delivery; and
 - (2) title or register for use in another state or country;is the rate of that state or country (excluding any locally imposed tax rates) as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (c).
- (c) The department of state revenue shall prescribe the form of the affidavit required by subsection (b). In addition to the certification required by subsection (b), the affidavit must include the following:
 - (1) The name of the state or country in which the motor vehicle will be titled or registered.
 - (2) An affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true.
 - (3) Any other information required by the department of state revenue for the purpose of verifying the information contained in the affidavit.
- (d) The department may audit affidavits submitted under this section and make a proposed assessment of the amount of unpaid tax due with respect to any incorrect information submitted in an affidavit required by this section.

[45 IAC 2.2-3-14](#) provides the following:

The use tax does not apply to the following:

- (1) Storage, use, or other consumption in Indiana of tangible personal property sold in a transaction on which the gross retail tax has been paid.

(2) Storage, use, or other consumption in Indiana of tangible personal property sold in a transaction exempt from gross retail tax under any part of [IC 6-2.5-5](#), except [IC 6.2.5-5-24\(b\)](#) [sic]. Therefore, as provided by [IC 6-2.5-5-24\(a\)](#), the exemption from use tax would extend to transactions described in [IC 6-2.1-3-2](#), [IC 6-2.1-3-5](#), [IC 6-2.1-3-6](#), [IC 6-2.1-3-7](#), and [IC 6-2.1-3-13](#). Such items include:

(A) Gross income derived from sales to the United States government, but only to the extent to which the state of Indiana is prohibited from taxing such gross income by the constitution of the United States.

(B) Taxes received or collected by the taxpayer as agent for the state of Indiana and/or the United States of America. (This exemption is limited only to taxpayers explicitly designated as a collection agent in the statute under the terms of which tax is imposed.)

(C) Retailers' excise taxes imposed by the United States solely on the sale at retail of tangible personal property and collected by a retail merchant as a separate item in addition to the price of the property sold, and which is remitted by such retail merchant to the taxing authority. "Retailers' excise taxes imposed by the United States" includes manufacturer excise tax imposed by the United States on motor vehicle bodies and chassis, parts, and accessories therefore, tires, tubes for tires, tread rubber and laminated tires, provided that such tax is separately stated by the seller.

Exemption statutes are strictly construed against the taxpayer and in favor of taxation. *Indiana Dept. of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 524 (Ind. 1983). Whether a taxpayer qualifies for an exemption from tax is "highly fact sensitive," and it is the taxpayer's burden to prove the exemption criteria have been met. *Indiana Dept. of Revenue v. Kimball International, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The exemption cited by Taxpayer, like all tax exemption provisions, is strictly construed against the taxpayer. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999). "[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.*" *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 100-01 (Ind. Ct. App. 1974) (*Emphasis added*).

In this case, the retail transaction took place in Indiana and Indiana sales tax should have been collected. Thus under IC § 6-2.5-3-2, Indiana could assess use tax on the purchase. IC § 6-2.5-3-2 allows purchasers who purchase qualified motor vehicles in Indiana but intend to title and register the vehicles to be used in states other than Indiana (within 30 days after the sale) to pay the sales tax rate of the state for which the vehicles are ultimately titled, registered, and used. Taxpayer titled the Polaris in Ohio and paid Ohio tax, and therefore he is entitled to a credit in Indiana. Ohio's use tax rate is 5.75 percent and that can be used to offset the 7 percent Indiana use tax. Thus, the remaining 1.25 percent is due to Indiana.

Taxpayer argues that he is entitled to an agricultural exemption. The Department informed Taxpayer that in order to get an agricultural exemption he must complete a Form AGQ-100 with details of daily use. Additionally, the Department informed Taxpayer that his Schedule F or equivalent from his Federal Income Tax Return is needed. Without both the AGQ-100 and Schedule F, Taxpayer must be denied exemption for the 2017 Polaris. The Department has yet to receive either of those forms. Taxpayer has partially met his burden under IC § 6-8.1-5-1(c). Under IC § 6-2.5-2-2 and IC § 6-2.5-2-3, Taxpayer will pay the remaining 1.25 percent in Indiana use tax on the 2017 Polaris for tax year 2016. The Department will adjust the assessment to reflect the changes referenced above.

FINDING

Taxpayer's protest is partially sustained.

April 14, 2020

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