

Letter of Findings: 04-20200125
Gross Retail Tax
For the Year 2018

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed with Indiana Vehicle Dealership that it was not required to collect sales tax on the sale of a cargo trailer to a customer whose legal residence was in Florida; customer provided Vehicle Dealership an affidavit indicating that the cargo trailer would be timely removed from Indiana and titled in Georgia - a reciprocal state.

ISSUE

I. Gross Retail Tax - Sale of a Cargo Trailer to an Out-of-State Customer.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-1-2(a); IC § 6-2.5-4-1(b); IC § 6-2.5-8-8(a); IC § 6-2.5-9-3; IC § 6-2.5-13-1(d)(1); IC § 6-2.5-39(c); IC § 6-8.1-5-1(c); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 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 2.2-2-1](#); Sales Tax Information Bulletin 72 (Effective July 1, 2017).

Taxpayer argues that the Department erred in assessing sales tax on the sale of a trailer on the ground that the purchaser provided Taxpayer a properly completed exemption affidavit indicating that the trailer would be titled in a reciprocal state.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of selling, renting, and upgrading trailers. In January 2018, Taxpayer sold a "Sure-Trac" trailer to a customer for approximately \$5,000. The customer had a home address in Georgia. At the time of purchase, the customer provided Taxpayer with an "Affidavit of Exemption by a Nonresident of Indiana" (ST-137RV) dated January 2018. The affidavit is intended to provide an Indiana sales tax exemption to out-of-state purchasers who will title their vehicles in certain other states.

The Indiana Department of Revenue ("Department") reviewed the transaction and issued Taxpayer a proposed assessment of sales tax on the ground that the purchaser's exemption certificate indicated that the purchaser was a "Florida resident."

Taxpayer disagreed with the assessment on the ground that the exemption certificate indicated that the trailer would be "removed from the state of Indiana . . . within 30 days to be registered/titled in Georgia." In its protest submission, Taxpayer requested a "[f]inal determination without a hearing." This Letter of Findings results.

I. Gross Retail Tax - Sale of a Cargo Trailer to an Out-of-State Customer.

DISCUSSION

The issue is whether Taxpayer has met its statutory burden of establishing that the sale of the Sure-Trac trailer was exempt from sales tax because Taxpayer obtained from the customer an exemption certificate indicating that the trailer would be titled in Georgia.

As a threshold issue, it is Taxpayer's responsibility to establish that the assessment of additional tax 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 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).

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); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b).

A person who acquires tangible person property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana] . . ." IC § 6-2.5-13-1(d)(1). In general, the purchaser "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." IC § 6-2.5-2-1(b).

When a purchaser claims the transaction "is exempt from the state gross retail and use taxes, [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). "A seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail or use tax on that purchase." *Id.* Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

Taxpayer argues it was not required to collect sales tax from its customer because IC § 6-2.5-39(c) provides that customer a specific exemption from Indiana sales tax.

- (c) A transaction involving a cargo trailer or a recreational vehicle is exempt from the state gross retail tax if:
- (1) the purchaser is a nonresident;
 - (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
 - (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;
 - (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; and
 - (5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.**

A transaction involving a cargo trailer or recreational vehicle that does not meet the requirements of subdivision (5) is not exempt from the state gross retail tax.

(Emphasis added).

As explained in Sales Tax Information Bulletin 72 (Effective July 1, 2017), [20180425-IR-045180188NRA](#):

Sales of recreational vehicles and cargo trailers by Indiana dealers destined for out-of-state registration are exempt from the Indiana sales tax if the state where the recreational vehicle or cargo trailer will be registered provides a similar exemption for an Indiana resident making a purchase in that state. This exemption also applies to states that do not impose a sales tax. The jurisdictions below provide a drive-out exemption, provide reciprocity, or have no sales tax.

The Bulletin lists Georgia as one of the reciprocal states; Florida is not one of the listed reciprocal states.

In order to obtain the benefit of the exemption a non-resident purchaser must claim this exemption by submitting an Affidavit of Exemption by a Nonresident of Indiana on the Purchase of a Recreational Vehicle or Cargo Trailer

("ST-137RV Affidavit") stating the purchaser's intent to transport the RV to a destination outside of Indiana within 30 days, and title or register the RV for use in another state. IC § 6-2.5-5-39(d). Taxpayer provided a copy of the ST-137RV Affidavit, completed at the time of purchase, indicating that the trailer would be titled in Georgia.

In this case, Taxpayer obtained from its customer a properly completed ST-137RV ("Affidavit of Exemption") indicating that the non-resident purchaser intended to remove the vehicle from Indiana within 30 days and title the vehicle in Georgia. Admittedly, the customer listed Florida as his "legal residence" and provided a Florida driver's license, but he also signed the affidavit - under penalty of perjury - that the trailer would be timely removed from Indiana and titled in the reciprocal state of Georgia.

The statute does not impose tax on "legal residents" of non-reciprocal states such as Florida. Rather the statute clearly provides the exemption to sales of vehicles which are removed from Indiana and then "titled" in a reciprocal state.

Whether or not the trailer was eventually titled in Florida, Georgia, or any other state is not the issue in the Letter of Findings. The issue here is whether Taxpayer did everything required to relieve itself of any responsibility for collecting Indiana sales tax on this particular transaction; in this case, Taxpayer did so and may not now be required to pay sales tax.

FINDING

Taxpayer's protest is sustained.

April 2, 2020

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