

**Letter of Findings: 04-20200029**  
**Sales & Use Tax**  
**For the Tax Years 2016, 2017 and 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 on certain purchase made in tax year 2016, 2017, and 2018.

**ISSUE**

**I. Use Tax - Applicability.**

**Authority:** IC § 6-8.1-5-1; IC § 6-2.5-3-2; [45 IAC 2.2-3-14](#); *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*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, (Ind. 2014).

**STATEMENT OF FACTS**

Taxpayer is an Indiana resident who owns a vehicle repair shop. After an audit, the Indiana Department of Revenue ("Department") issued proposed use tax assessments for tax years 2016, 2017, and 2018. Taxpayer protested the proposed assessments. A hearing was conducted and this Letter of Finding results. Additional facts will be provided as necessary.

**I. Use Tax - Applicability.**

**DISCUSSION**

The Department's audit discovered purchases of taxable personal property upon which Taxpayer should have remitted use tax during the years at issue. The property includes two large capital assets and multiple purchases of consumable supplies. Taxpayer argues that he paid sales tax on these items at the time of purchase and provided documentation in support of the argument. Taxpayer provided multiple estimates and a self-created spreadsheet as documentation.

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 2.2-3-14](#) 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.

After review, the Department cannot agree with Taxpayer's protest. All of the items at issue are subject to use tax under IC § 6-2.5-3-2, since they were acquired in retail transaction and used in Indiana. Taxpayer did not provide sufficient documentation to support his argument that use tax is not due. Taxpayer provided a self-created Microsoft Excel spreadsheet which appears to show sales taxes paid monthly during the years and three estimates. This does not establish that Taxpayer paid sales at the time of the purchase. Taxpayer argues that sales tax was included in every sale and that this is proven by the estimates. He also argues that estimates do not itemize the consumable supplies but that they are included. The Department would need to see invoices rather than estimates and actual receipts instead of a self-created Excel Spreadsheet. Taxpayer has not met his burden under IC § 6-8.1-5-1(c), and is therefore proposed assessment is correct.

#### FINDING

Taxpayer's protest is denied.

May 5, 2020

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