

Letter of Findings: 04-20191428
Gross Retail and Use Tax
For the Years 2016 - 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Car Dealership failed to provide documentation supporting its claim that it was not subject to additional sales and uses tax.

ISSUE

I. Gross Retail and Use Tax - Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002).

Taxpayer argues it provided adequate documentation and explanation to bar the imposition of additional sales and use tax.

STATEMENT OF FACTS

Taxpayer is a car dealership with two locations in Indiana. Taxpayer sells used vehicles, performs service work, offers service contracts, and financial and insurance products. Taxpayer was subject to an audit for tax years 2016 through 2018 in which the Indiana Department of Revenue ("Department") assessed Taxpayer with additional sales and use tax. Taxpayer protested but failed to appear to the Department's administrative hearing or respond to requests to reschedule that hearing. Thus, this Letter of Findings is based on the information in the file only. Additional facts will be supplied as necessary.

I. Gross Retail and Use Tax - Imposition.

DISCUSSION

Taxpayer was subject to a Department sales and use tax audit for tax years 2016 to 2018. As a result of that audit, Taxpayer was assessed additional sales and use tax for all three years. Taxpayer protested and requested an audit review prior to a hearing. As no additional documentation was provided, a hearing was scheduled.

As a threshold issue, it is the 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 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 its 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 n.9 (Ind. Tax Ct. 2012). 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, interpretations of Indiana tax law contained

within this decision, as well as the preceding audit decision, are entitled to deference.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. Indiana Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (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).

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Indiana also imposes a complementary excise tax called "the use tax" 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." IC § 6-2.5-3-2(a). Use means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). In effect and practice, the use tax is functionally equivalent to the sales tax. See *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Next, the Department refers to IC § 6-8.1-5-1(b), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail. (Emphasis added).

Also, the Department refers to IC § 6-8.1-5-4(a), which states:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. *The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.* (Emphasis added).

Therefore, all taxpayers subject to a listed tax must keep books and records such as, but not limited to, invoices, register tapes, receipts, and cancelled checks, as provided by IC § 6-8.1-5-4(a). If the Department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department, as provided by IC § 6-8.1-5-1(b).

In this instant case, the Department concluded its sales and use tax audit in August of 2019. According to the audit report, "[Taxpayer's Representative] was unable to provide an explanation as to how the [T]axpayer records vehicle sales transactions; and was unable to provide a reconciliation of the difference in reported taxable sales." Further, because Taxpayer "did not provide adequate expensed purchase invoices or receipts to determine if sales tax was paid on purchases of tangible personal property[.]" . . . the audit had to use [the] best information available to determine a use tax adjustment. Due to a lack of adequate documentation and explanation, the Department assessed Taxpayer with additional sales and use tax.

Taxpayer filed a timely protest in October of 2019. Taxpayer's Protest Submission Form indicated that it wanted audit to review the protest, however, no additional documentation was provided with the protest. Rather, Taxpayer stated that it disagreed with the audit and that it provided "various documents and reconciliations[.]" Further, Taxpayer claims that it offered explanations to the auditor via email. Taxpayer also stated that it offered to walk through its processes with the auditor again in May, but that the auditor's response was that proposed assessments were going to be made.

Based on Taxpayer's protest, the Department determined that holding a hearing was appropriate and necessary. On November 25, 2019, the Department scheduled a hearing to be held on January 6, 2020. The day of the

hearing, Taxpayer's Representative called to reschedule the hearing. The Department offered up several options for a new date but did not get a response. The Department contacted Taxpayer and/or its Representative three additional times without response. Thus, this decision is based on the information in the audit report and whatever Taxpayer provided with its protest. The Department finds Taxpayer's statements in its protest letter that it provided various documents and reconciliations and an explanation of its processes to be unconvincing without supporting documentation. The audit is the Department's eyes and ears and we rely on the audit findings without proof to the contrary. Taxpayer carries the burden of proving proposed assessments wrong under IC § 6-8.1-5-1(c). Taxpayer has failed to meet this burden, thus its protest is denied.

FINDING

Taxpayer's protest is denied.

June 16, 2020

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