

**Letter of Findings: 04-20191425**  
**Indiana 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual failed to demonstrate that the proposed assessment was incorrect.

### ISSUE

#### I. Use Tax - Imposition.

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-8.1-5-1; *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); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-14](#).

Taxpayer protests the Indiana consumer use tax imposed for the 2016 tax year.

### STATEMENT OF FACTS

Prior to 2016, Taxpayer lived and operated a business outside of Indiana. During that time, Taxpayer purchased a vehicle on behalf of his business. Later, he acquired that vehicle from his company, which went out of business. Taxpayer subsequently moved to Indiana and registered his vehicle with the BMV in 2016. An audit conducted by the Indiana Department of Revenue ("Department") concluded that the Taxpayer had reported a selling price of \$0 to the Indiana Bureau of Motor Vehicles ("BMV"). The Department assessed consumer use tax, along with interest and penalties. Taxpayer filed a written protest of the assessment and an administrative hearing was held via teleconference. Additional facts will be provided as necessary.

#### I. Use Tax - Imposition.

### DISCUSSION

Taxpayer challenges the consumer use tax assessment, claiming that he should not owe any tax on the truck because his business was closed prior to his arrival in Indiana.

As a threshold issue, it is a 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 [D]epartment'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. Poorly developed and non-cogent arguments are subject to waiver. *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1. Indiana also imposes a complementary excise tax on "the storage, use, or consumption of tangible personal property in Indiana," colloquially known as a "use tax," which applies regardless of the location of the 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).

Tangible personal property purchased in a retail transaction is subject to use tax when the tangible personal property is "stored, used or otherwise consumed in Indiana . . . unless the Indiana state gross retail tax has been collected at the point of purchase." [45 IAC 2.2-3-4](#). When sales tax is not paid as a part of a retail transaction, use tax will be imposed unless the purchase is eligible for an exemption.

As a general rule, all purchases of tangible personal property are taxable unless specifically exempted by statutes or regulations. An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4, [45 IAC 2.2-3-4](#), and [45 IAC 2.2-3-14](#)(1). Tax exemptions, however, are strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[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." *Id.* at 101 (internal citations omitted). Thus, in applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

Taxpayer provided no evidence to show that tax was paid on the vehicle at the time of its transfer from the corporation to the Taxpayer. Without this evidence, Taxpayer cannot show that he qualifies for the exemption under IC § 6-2.5-3-4. Taxpayer did not rebut the Department's prima facie evidence and therefore failed to meet his burden under IC § 6-8.1-5-1.

### FINDING

Taxpayer's protest is respectfully denied.

September 18, 2020

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