

Letter of Findings: 04-20200305
Gross Retail Tax
For the Years 2014-2018

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Out-of-state Company did not owe sales tax on the transactions in question.

ISSUE

I. Gross Retail Tax - Assessment.

Authority: IC § 6-2.5-2-1; 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); *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).

Taxpayer protests the assessment of sales tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state company which sells software and technology services nationally. The Indiana Department of Revenue ("Department") assessed Taxpayer sales tax on out-of-state sales for transactions occurring during 2014-2018. Taxpayer submitted a protest challenging the assessment and an administrative hearing was conducted during which Taxpayer explained the basis for its protest. This Letter of Findings results. Additional facts will be provided below as necessary.

I. Gross Retail Tax - Assessment.

DISCUSSION

Taxpayer claims that it did not have any sales subject to Indiana sales tax. 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 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). 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).

Sales tax is imposed by IC § 6-2.5-2-1, in relevant part 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.

The Department issued assessments for sales tax for tax years 2014-2018. Taxpayer provided sufficient documentation to prove the Department's assessment incorrect. Thus, Taxpayer met its burden as required by IC § 6-8.1-5-1(c) and its protest is sustained.

FINDING

Taxpayer's protest is sustained.

December 8, 2020

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