

Letter of Findings: 04-20211050
Use Tax
For the Tax Years 2018 and 2019

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Business provided documentation showing the Department's audit assessment included duplicated invoices for fixed assets. The assessment will be adjusted accordingly.

ISSUE

I. Use Tax - Burden of Proof.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; 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); *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *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 argues that the Department's audit calculations for 2018 and 2019 were incorrect due to duplicated invoices.

STATEMENT OF FACTS

Taxpayer is an international company doing business in Indiana. Taxpayer timely remitted sales tax for the 2018 and 2019 tax years, and the Department performed an audit of that remittance. Subsequently, the Department assessed additional use tax on fixed assets for the tax years.

Taxpayer disagreed with the assessment and filed a protest to that effect. A hearing was held, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Use Tax - Burden of Proof.

DISCUSSION

Taxpayer protests the assessment, claiming that the invoices at issue were duplicated during the audit process. Those invoices being counted twice resulted in the Taxpayer's assessment being overstated. Taxpayer agrees that it owes use tax but disagrees as to the amount.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment 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).

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). A person who acquires property in a retail transaction in Indiana (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). 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). The use tax is functionally equivalent to the sales tax and ensures that retail

purchasers of non-exempt retail transactions escaping sales tax liability bear their share of the tax burden. See *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047-50 (Ind. Tax Ct. 2002).

Taxpayer agrees that use tax is owed but disagrees as to the amount. Taxpayers provided documentation showing that three invoices were duplicated during the audit process, resulting in incorrect use tax calculations. These duplicate invoices will be removed, and Taxpayer's assessments will be recalculated.

FINDING

Taxpayer's protest is sustained.

October 11, 2022

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