

**Letter of Findings: 04-20231264**  
**Gross Retail and Use Tax**  
**For the Years 2018, 2019, and 2020**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

### HOLDING

Sports Equipment Retailer was unable to establish that the Department's assessment of sales tax was incorrect; in the face of the Retailer's incomplete or insufficient sales records, the audit assessment was dependent upon a reconstruction of the Retailer's sales records, bank deposits, and the returns filed by the Retailers all of which constituted the "best information available."

### ISSUE

#### I. Gross Retail and Use Tax - Retail Sales and Business Records.

**Authority:** [IC 6-2.5-1-2](#); [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-5](#) et seq.; [IC 6-2.5-9-3](#); [IC 6-8.1-5-1](#); [IC 6-8.1-5-4](#); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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); [45 IAC 15-5-1](#).

Taxpayer argues that the Department's assessment of additional sales tax is overstated because Taxpayer now has sufficient documentation to fully account for its taxable sales during the three years under audit.

### STATEMENT OF FACTS

Taxpayer is an Indiana retailer in the business of selling golf and other recreational equipment. Taxpayer also provides its customers various services such as equipment repair and providing training opportunities.

The Indiana Department of Revenue ("Department") issued Taxpayer a Notice of Proposed Assessment because, according to the Department, Taxpayer failed to submit a July 2018 sales tax return. According to the Department, that initial assessment was based upon the "best information available" to the Department. After that initial assessment was issued, the Department thereafter conducted a sales and use tax audit for the years 2018 through 2020.

That audit resulted in an assessment of additional tax for the three years under audit. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled to allow Taxpayer or its representatives an opportunity to explain the basis for the protest. This Letter of Findings results.

#### I. Gross Retail and Use Tax - Retail Sales and Business Records.

### DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that the proposed assessments of sales and use tax were wrong.

#### A. The Department's Audit.

Taxpayer's tax assessment stands at approximately \$190,000. That number results from the Department's determination that Taxpayer underreported its taxable sales during the audit years. According to the Department, Taxpayer underreported approximately \$500,000 in taxable sales during each of the three years under review. For example, Taxpayer reported approximately \$100,000 in 2018 taxable sales; the audit determined that Taxpayer had approximately \$600,000 in taxable sales that year. According to the audit report, Taxpayer had

"insufficient sales records," the Department resorted to reviewing and relying upon Taxpayer's bank deposits as the best information available. The audit report explained:

Bank deposits were higher than the gross receipts reported on the company's income tax returns, so the difference is being considered additional gross receipts subject to income tax. Bank deposits were also used as a starting point for total sales that should have been reported on the sales tax returns (ST-103s).

In addition, the audit found that Taxpayer participated in trade shows outside Indiana. At these shows, Taxpayer sold golf equipment but - according to the audit - Taxpayer was not registered to collect sales tax in those out-of-state jurisdictions. Taxpayer was unable to document these sales, was unable to establish what was being sold, was unable to document what it charged these customers, and was unable to establish that it charged sales tax.

The Department's audit also noted certain inconsistencies in Taxpayer's treatment of credit card sales. The audit explained as follows:

[T]axpayer has an individual 1099K reflecting credit card sales that are sales to [customers] but was not included in gross receipts on the income tax returns. Some of the credit card sales were included in the bank deposits, but not all sales.

The audit also made adjustments to transactions which were not subject to sales or use tax. For example, "[B]ank deposits were reduced by loans and transfers from other accounts these were not sales subject to sales tax." Similarly, "[D]uplicate Paypal sales that were already included in the bank deposits have been removed from the income tax adjustments."

The audit also considered whether any of the transactions were exempt because Taxpayer was providing its customers exempt services such as golf lessons or providing customers use of Taxpayer's golf simulator.

In making the calculations described above, the audit allowed "credit for the taxable sales reported on the ST-103s [while] the remaining sales are being considered taxable sales subject to sales tax."

Although both the audit report and this decision make passing note of "income tax," the only issues here are the "sales tax" assessments.

## **B. Taxpayer's Burden of Proof.**

As a threshold issue, it is the Taxpayer's responsibility to establish that the 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).

Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. The Department points out that, "[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.'" *Dep't. 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, are entitled to deference.

## **C. Indiana's Sales and Use Tax.**

Pursuant to [IC 6-2.5-2-1](#), a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. [IC 6-2.5-5](#) et seq. Retail transactions involve the transfer of tangible personal property. [IC 6-2.5-1-2](#); [IC 6-2.5-4-1](#).

A retail merchant - such as a store selling golf equipment - is required to "collect the tax as agent for the state." [IC 6-2.5-2-1\(b\)](#). The retail merchant then "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." [IC 6-2.5-9-3](#).

A complementary 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. [IC 6-2.5-3-2](#).

#### **D. Record Keeping Requirements.**

Taxpayers are required to keep and maintain business records. "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 tax by reviewing those books and records." [IC 6-8.1-5-4\(a\)](#). In addition, [IC 6-8.1-5-4\(c\)](#) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times."

In the absence of contemporaneous records, the Department is required by law to issue an assessment based upon the best alternative means that may be available. [IC 6-8.1-5-1\(b\)](#) provides in relevant part that "If the [D]epartment reasonably believes that a person has not reported the proper amount of tax due, the [D]epartment *shall* make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment." (*Emphasis added*). See also [45 IAC 15-5-1](#).

#### **E. Analysis and Conclusions.**

Based upon the information provided in the audit report, the Department did what the law requires. The Department is unable to agree that Taxpayer has met its statutory burden under [IC 6-8.1-5-1\(c\)](#) of establishing that the sales tax assessment was "wrong." In the absence of source documentation required under [IC 6-8.1-5-4\(a\)](#) and the Taxpayer's failure to prepare and maintain the business records called for in [IC 6-8.1-5-4\(a\)](#), the audit was placed in the position of making an assessment based on the "best information available."

The Department finds no evidence that Taxpayer was denied the opportunity to provide the requested documentation or that the amount of the assessment was arbitrary or totally unsupported. Instead, the Department did what it is required to do pursuant to [IC 6-8.1-5-1\(b\)](#) in reliance on the best information available.

#### **FINDING**

Taxpayer's protest is respectfully denied.

May 17, 2023

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