

**Letter of Findings: 04-20231273
Indiana Gross Retail**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

As an S-Corporation, Indiana Tool Retailer made a mistake when it incorrectly accounted for rebate amounts associated with Retailer's sale of tools. Retailer was responsible for additional sales tax.

ISSUES**I. Indiana Gross Retail Tax - Rebates and Price Discounts.**

Authority: [IC 6-2.5-1-5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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); Sales Tax Information Bulletin 58 (November 2022); *What is Accrual Accounting*, <https://www.investopedia.com/terms/a/accrualaccounting.asp>; *Cash Basis Accounting*, <https://www.investopedia.com/terms/c/cashbasis.asp>.

Taxpayer S-Corporation argues the Department made a mistake when it found that Taxpayer S- Corporation received additional gross retail income attributable to the sale of tools and equipment.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of selling tools and other equipment used to repair automobiles. Taxpayer is organized as an S-Corporation. Taxpayer S-Corporation sells tool sets, toolboxes, and diagnostic equipment.

Taxpayer S-Corporation is a franchisee licensed to sell a particular line of tools and equipment.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer S- Corporation's business records and sales tax returns. The Department prepared and issued an audit report. That report states in part as follows:

The [Taxpayer S-Corporation] continued to incorrectly report its sales tax under the sole proprietor account. The [Taxpayer S-Corporation] has been advised to close this account and open an account under the S Corporation.

The Department's Taxpayer S-Corporation audit resulted in an assessment of use tax on purchases of equipment when "no documentation or vendor receipts were provided demonstrating that sales tax was paid or use tax remitted." The audit also resulted in assessment of additional sales tax.

Taxpayer S-Corporation and Taxpayer Shareholder disagreed with the assessment, challenging the Department's Taxpayer S-Corporation and Taxpayer Shareholder's analysis, conclusions, and assessments.

An administrative hearing was conducted during which Taxpayer S-Corporations' and Taxpayer Shareholder's representative explained the basis for the protests. This Letter of Findings results and addresses only the sales tax issue.

I. Indiana Gross Retail Tax - Rebates and Price Discounts.

DISCUSSION

The issue is whether Taxpayer S-Corporation established the Department made a mistake when it concluded that Taxpayer S-Corporation received more income than originally reported.

Taxpayer S-Corporation explains the reason why the Department made this mistake.

The [Department's] agent determined that sales reported as non-taxable were in fact taxable. The reported non-taxable sales were in fact rebate certificates. These rebates were a reduction in price and should be reported as such, a price reduction. These price reductions should not be treated as taxable sales.

Indiana sales tax is imposed on "retail transactions" made in Indiana. [IC 6-2.5-2-1\(a\)](#). A person who acquires property in a retail transaction is liable for the sales tax on the transaction. [IC 6-2.5-2-1\(b\)](#). Sales tax is assessed on the "gross retail income" received by a retail merchant in a retail transaction. [IC 6-2.5-2-2](#). 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 definition of "gross retail income" is found in [IC 6-2.5-1-5](#). This statute provides in pertinent part the following:

(a) Except as provided in subsection (b), "gross retail income" means the **total amount of consideration**, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

...

(5) **consideration received by the seller from a third party** if:

(A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

...

(b) "Gross retail income" does not include that portion of the gross receipts attributable to:

...

(3) discounts, including cash, terms, or coupons that are **not reimbursed by a third party** that are allowed by a seller and taken by a purchaser on a sale. . .

The Department's Sales Tax Information Bulletin 58 (November 2022) provides further clarification.

Gross retail income **includes consideration received by the seller from a third party** if:

- the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

- the seller has an obligation to pass the price reduction or discount through to the purchaser;

- the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

- the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

The issue ultimately turns on whether Taxpayer S-Corporation sold tools subject to a rebate or whether Taxpayer S-Corporation sold tools at a reduced price. For example, customer buys a \$100 tool but is entitled to a 20 percent reduction. When the customer pays Taxpayer S-Corporation \$80, does Taxpayer S-Corporation charge sales tax on \$80 or \$100? Does Taxpayer S-Corporation receive \$80 in gross retail income, or did it receive \$100 in gross retail income?

It depends; if the customer claimed a 20 percent discount and Taxpayer S-Corporation was never reimbursed for that 20 percent, Taxpayer S-Corporation received \$80 in gross retail income.

If the customer provided a 20 percent rebate coupon when it purchased the \$100 tool, customer still put down \$80 to complete the purchase. However, a "rebate" is simply the indication that a third-party will subsequently step in and compensate Taxpayer S-Corporation for the unpaid \$20 and the vendor has just completed a \$100 transaction.

A transaction turning on a rebate coupon is a transaction in which three parties are involved: the customer, the vendor, and a third-party who stepped forward to pay the total difference between the cost of the tool and the amount the customer paid.

In the example cited at the outset, if Taxpayer S-Corporation sells a \$100 tool to a customer who provides a 20 percent discount coupon - such as that routinely provided by manufacturers - the total price is "fixed and determinable", and the gross retail income received for the purchase is \$100. The \$100 is the total amount the vendor will ever receive and \$100 is the amount of gross retail income received by the vendor.

In contrast, straightforward "'discounts' allowed by a vendor are not included within gross retail income if they are not reimbursed by a third party "

Again, referring back to the example cited above, if the customer buys a \$100 tool but the customer is entitled to a 20 percent discount, then the amount of gross retail income received is \$80. The \$80 is the only amount the vendor will ever receive.

In this case, the Department determined that Taxpayer S-Corporation was selling tools subject to a rebate while Taxpayer S-Corporation claims it was selling tools at a discount. Simply put, and falling back on the illustration first provided above, the Department found that Taxpayer S-Corporation received \$100 in gross retail income, but Taxpayer S-Corporation claimed that its gross retail income was \$80.

As a threshold issue, it is the Taxpayer S-Corporation'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 S-Corporation 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. *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, are entitled to deference.

Taxpayer S-Corporation's explanation follows:

The [auditor] used bank deposits in determining gross receipts. Taxpayer S-Corporation [] is an accrual basis [T]axpayer and not a cash basis Taxpayer S-Corporation. In addition, [T]axpayer [] collects payment due to [Franchisor] and the outgoing payments are not an expense to [T]axpayer. Had the [auditor] matched the expense of the incoming payments, there would have been no additional income.

An accrual basis vendor employs "a financial accounting method that allows a company to record revenue before receiving payment for goods or services sold and record expenses as they are incurred. In other words, the revenue earned, and expenses incurred are entered into the company's journal regardless of when money exchanges hands." *What is Accrual Accounting*, <https://www.investopedia.com/terms/a/accrualaccounting.asp>. (Last visited June 8, 2023).

Taxpayer S-Corporation states the Department misunderstood its accounting of gross retail income and that Taxpayer S-Corporation is not a "cash basis" vendor. "Cash basis refers to a major accounting method that recognizes revenues and expenses at the time cash is received or paid out." *Cash Basis Accounting*, <https://www.investopedia.com/terms/c/cashbasis.asp>. (Last visited June 8, 2023).

Nonetheless, the Department does not agree that the issue turns on Taxpayer S-Corporation's accounting methodology. The issue turns on correctly accounting for the gross retail income received from the sale of tools to its customers. The Department finds that Taxpayer S-Corporation was conducting sales transactions which included "rebates" and not "discounts." For example, in an invoice dated April 25, 2018, Taxpayer S-Corporation sold a \$3,000 tool to one of its customers. \$3,000 was the "total price" of the tool. The invoice stated that the customer claimed a ten percent manufacturer's rebate of \$300. The customer paid \$2,700. Taxpayer S-Corporation made a mistake when it recorded \$300 as an "exempt" sale on its ST-103 (Sales and Use Tax Voucher) returns. Instead of entering the rebate amounts on Line 1 (Total Sales). The cumulative result was that Taxpayer S-Corporation underreported total sales, total taxable sales, and total gross receipts on the federal 1120-S (U.S. Income Tax Return for an S Corporation).

The Department here find that Taxpayer S-Corporation's reliance on the distinction between accrual-based accounting and cash-based accounting is misplaced. The issue is whether Taxpayer S-Corporation reported the correct amount of gross retail income. The answer is that it did not because Taxpayer S-Corporation did not properly account for the manufacturer rebates.

The Department concludes that Taxpayer S-Corporation has failed to meet its statutory burden under [IC 6-8.1-5-1\(c\)](#) of establishing that the assessment or assessments were wrong.

FINDING

Taxpayer S-Corporation's protest is respectfully denied.

August 23, 2023

Finding Replaces: New

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