

**Letter of Findings: 04-20221514  
Gross Retail Tax  
For the Year 2022**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

### HOLDING

Individual's failure to file a return and failure to properly sign a bill of sale do not constitute fraud but do merit assessment of a negligence penalty.

### ISSUE

#### I. Gross Retail Tax - Penalty Assessment.

**Authority:** [IC 6-8.1-5-1](#); [IC 6-8.1-10-2.1](#); [IC 6-8.1-10-4](#); *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); [45 IAC 15-5-7](#).

Taxpayer argues that she is not liable for the penalty assessed by the Indiana Department of Revenue ("Department").

### STATEMENT OF FACTS

Taxpayer is an Indiana resident who purchased a vehicle with a cashier's check. She states that she purchased the vehicle on November 30, 2021, and totaled the car three weeks later, before she was able to register it with the Bureau of Motor Vehicles ("BMV"). After receiving a letter on February 22, 2022, from her insurance company stating that the vehicle was a total loss, Taxpayer was told to obtain a salvage title before she could receive payment from the insurance company. That day, Taxpayer took the car title and the insurance letter to the BMV and was scheduled to meet with a fraud investigator. After the meeting, Taxpayer was assessed tax on the vehicle purchase, as well as a one hundred percent fraud penalty. Taxpayer paid the tax and protests the fraud penalty. Taxpayer waived her right to a protest hearing. This Letter of Findings therefore results from documentation provided with the protest filing. Additional facts will be provided as necessary.

#### I. Gross Retail Tax - Penalty Assessment.

### DISCUSSION

The issue is whether Taxpayer is liable for a fraud penalty. Taxpayer is only challenging the penalty, not the sales tax on the vehicle purchase.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. [IC 6-8.1-5-1\(c\)](#); *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).

A one hundred percent fraud penalty was applied to Taxpayer after she failed to pay sales tax on the cash purchase of the vehicle. [IC 6-8.1-10-4](#) provides the necessary conditions for a fraud penalty assessment:

- (a) If a person fails to file a return or to make a full tax payment with that return with the fraudulent intent of evading the tax, the person is subject to a penalty.

- (b) The amount of the penalty imposed for a fraudulent failure described in subsection (a) is one hundred percent (100 [percent]) multiplied by:
- (1) the full amount of the tax if the person failed to file a return; or
  - (2) the amount of the tax that is not paid, if the person failed to pay the full amount of tax.
- (c) In addition to the civil penalty imposed under this section, a person who knowingly fails to file a return with the department or fails to pay the tax due under [IC 6-6-5](#), [IC 6-6-5.1](#), or [IC 6-6-5.5](#) commits a Class A misdemeanor.
- (d) The penalty imposed under this section is imposed in place of and not in addition to the penalty imposed under section 2.1 of this chapter.

To prove fraud, the Department must show five elements are met as outlined in [45 IAC 15-5-7\(f\)\(3\)](#):

- (A) Misrepresentation of a material fact: A person must truthfully and correctly report all information required by the Indiana Code and the department's regulations. Any failure to correctly report such information is a misrepresentation of a material fact. Failure to file a return may be a misrepresentation.
- (B) Scienter: This is a legal term meaning guilty knowledge or previous knowledge of a state of facts, such as evasion of tax, which it was a person's duty to guard against. A person must have actual knowledge of the responsibility of reporting the information under contention. However, the reckless making of statements without regard to their truth or falsity may serve as an imputation of scienter for purpose of proving fraud.
- (C) Deception: Deception operates on the mind of the victim of the fraud. If a person's actions or failure to act causes the department to believe a given set of facts which are not true, the person has deceived the department.
- (D) Reliance: Reliance also concerns the state of mind of the victim and is generally considered along with deception. If the person's actions, failure to act, or misrepresentations cause the department to rely on these acts to the detriment or injury of the department, the reliance requirement of fraud will be met.
- (E) Injury: The fraud instituted upon the department must cause an injury. This can be satisfied simply by the fact that the misrepresentation(s) caused the department not to have collected the money which properly belongs to the state of Indiana.

Here, Taxpayer purchased a vehicle in cash and provided the Department with the original bill of sale from the purchase. This bill of sale was signed by the seller on November 29, 2021, but was not countersigned by Taxpayer until February 22, 2022, the same day she received a letter from her insurance company and attempted to obtain title from the BMV. Taxpayer claims in her protest letter that she purchased the vehicle on November 30, 2021, which qualifies as a misrepresentation of a material fact. Her failure to file and remit payment also qualifies as an injury. However, Taxpayer's lack of knowledge or of a guilty mental state shows that fraud is inappropriate in this case.

Taxpayer stated that this was her first cash purchase of a vehicle. This inexperience would explain why the bill of sale was not signed upon the vehicle's receipt or at the time of payment to the seller. Likewise, the star next to the buyer's name on the bill of sale suggests that someone else pointed out to Taxpayer that her signature was required to finalize the document. Finally, Taxpayer providing this document to her insurance company, the BMV, and the Department without removing these errors suggests that this was not an attempt to defraud the state but is instead a misunderstanding of contract law. The scienter element of fraud is not inherent from the presence of other fraud elements. Given the totality of the circumstances, the scienter element of fraud has not been met.

Because Taxpayer's actions did not rise to the level of scienter, the imposition of the fraud penalty was inappropriate. However, Taxpayer may be subject to the negligence penalty under [IC 6-8.1-10-2.1](#). For the relevant period, it states:

- (a) Except as provided in [IC 6-3-4-12\(k\)](#) and [IC 6-3-4-13\(l\)](#), a person that:
- (1) fails to file a return for any of the listed taxes;
  - (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
  - (3) incurs, upon examination by the department, a deficiency that is due to negligence;
  - (4) fails to timely remit any tax held in trust for the state;
  - (5) fails to file a return in the electronic manner required by the department if such return is required to be filed electronically; or
  - (6) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)) overnight courier, personal delivery, or any other electronic means and the payment is not received by the department by the due date in such manner and in funds acceptable to the department;
- is subject to penalty.
- (b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent])

of:

- (1) the full amount of the tax due if the person failed to file the return or, in the case of a return required to be filed electronically, the return is not filed in the electronic manner required by the department;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment required to be made by electronic funds transfer, overnight courier, personal delivery, or any other electronic means by the due date in such manner.

Given the lack of an initial filing and the error in signing the bill of sale, Taxpayer was clearly negligent as provided by [IC 6-8.1-10-2.1](#). Taxpayer will be assessed a ten percent negligence penalty.

### FINDING

Taxpayer's protest is sustained in part and a new assessment for negligence will be issued.

August 23, 2023

*Finding Replaces: New*

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An [html](#) version of this document.