

**Letter of Findings: 04-20231998**  
**Gross Retail and Use Tax**  
**For the Years 2019, 2020, and 2021**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Business provided verifiable documents to support that the assessment was overstated. As such, Indiana Business was responsible for a reduced amount.

### ISSUE

#### I. Gross Retail and Use Tax - Burden of Proof.

**Authority:** [IC 6-2.5-1-2](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#); [IC 6-2.5-3-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-4-1](#); [IC 6-8.1-5-1](#); [IC 6-8.1-5-4](#); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466 (Ind. Tax. Ct. 1993); [45 IAC 2.2-2-1](#).

Taxpayer protested the audit assessment claiming that the assessment was overstated.

### STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer's business records and tax returns for the 2019, 2020, and 2021 tax years. Pursuant to the audit, the Department found that Taxpayer purchased tangible property to conduct its business without paying sales tax or remitting use tax on items it purchased. The Department assessed Taxpayer additional tax plus interest and penalty as a result. Taxpayer protested and a hearing was held. This Letter of Findings results.

#### I. Gross Retail and Use Tax - Burden of Proof.

### DISCUSSION

Pursuant to the audit, the Department assessed Taxpayer additional use tax because it found that Taxpayer did not pay sales tax when it purchased the items used for its business. Taxpayer, to the contrary, disagreed with the audit result, claiming the assessment was overstated. The issue thus is whether Taxpayer provided verifiable supporting documents sufficient to demonstrate that the assessment was overstated.

Indiana mandates that every person who is subject to a listed Indiana tax must keep books and records, including all source documents, "so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." [IC 6-8.1-5-4\(a\)](#).

Under [IC 6-8.1-5-1\(b\)](#), if the Department "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." 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\(c\)](#). 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).

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\(a\)](#); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." [IC 6-2.5-1-2\(a\)](#). Selling at retail occurs when a person "(1) acquires tangible personal

property for the purpose of resale; and (2) transfers that property to another person for consideration." [IC 6-2.5-4-1\(b\)](#). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. [IC 6-2.5-2-1\(b\)](#). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for the state." *Id.*

The Indiana use tax, on the other hand, is imposed on a person's 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\(a\)](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-27](#). "Use" means the "exercise of any right or power of ownership over tangible personal property." [IC 6-2.5-3-1\(a\)](#). By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1048 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 468-69 (Ind. Tax. Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. *Rhoads*, 774 N.E.2d at 1050. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. [IC 6-2.5-3-2\(a\)](#); *USAir, Inc.*, 623 N.E.2d at 468-69. A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See [IC 6-2.5-1-2](#); [IC 6-2.5-4-1\(b\)](#) and (c); [IC 6-2.5-3-2\(a\)](#).

Taxpayer in this case claimed that it paid sales tax on the following items purchased to conduct its business:

Date	Name	Description	Amount
07/26/2019	Dell	Computer and Internet Expenses	1,033.60
09/06/2019	Quill	Office Supp. Expense	6.52
09/06/2019	Quill	Office Supp. Expense	53.11
01/09/2019	Staples	Office Supp. Expense	25.65
01/10/2019	Staples	Office Supp. Expense	43.86
12/11/2019	Staples	Equipment-Office Expense	390.48
12/11/2019	Staples	Office Supp. Expense	19.04
06/23/2020	Walmart	Office Supp. Expense	7.45
07/02/2020	Walmart	Office Supp. Expense	22.73
10/27/2021	Unknown	Unknown	1,380.07
11/17/2021	Hobby Lobby	Marketing Expense	212.65
11/02/2021	Hoovers Candy	Marketing Expense	682.12
11/02/2021	Walmart	Office Supp Expense	75.86

To support its protest, Taxpayer provided additional documents, such as receipts and evidence of payment. Based on the additional documents provided, the Department is prepared to agree that Taxpayer paid sales tax at the time of the purchase. As such, Taxpayer is not liable for additional use tax assessed for the same items.

To conclude, based on the additional verifiable supporting documents, the Department agrees that Taxpayer met its burden of proof demonstrating that the audit assessment was incorrect pursuant to the above-referenced Indiana law. Taxpayer, however, remains responsible for the audit assessment it did not protest.

## FINDING

Taxpayer's protest is sustained.

September 18, 2023

*Finding Replaces: New*

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