

Letter of Findings: 04-20231156
Sales and Use Tax
For The Years 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 Indiana Department of Revenue'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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 protested the assessment of use tax. Business provided sufficient documentation showing sales tax was paid on some purchases and that other purchases consisted of services that are exempt from sales and use tax; however, documentation was insufficient related to the remaining transactions that Business protested.

ISSUE

I. Consumer Use Tax - Imposition.

Authority: [IC 6-2.5-1-2](#); [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](#); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 462 (Ind. 2012); *Indiana Dept. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Express Scripts v. Indiana Dept. of State Revenue*, 170 N.E.3d 273 (Ind. Tax Ct. 2021); *Miller Pipeline v. Indiana Dept. of State Revenue*, 995 N.E.2d 733 (Ind. Tax Ct. 2013); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoads v. Indiana Dept. 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 protests the assessment of use tax on tangible personal property and services.

STATEMENT OF FACTS

Taxpayer is an orthodontic office located in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer purchased items on which sales tax was not paid. The Department issued proposed assessments for use tax.

Taxpayer protested a portion of the proposed assessments and proposed a settlement regarding the assessed liability. The Department gathered additional information and explanation from Taxpayer's representative and declined the settlement offer. The Department then held an administrative hearing with Taxpayer's representative. This Letter of Findings results. Additional facts will be provided as necessary.

I. Consumer Use Tax - Imposition.

DISCUSSION

Taxpayer protests the imposition of use tax on various purchases made in tax years 2019 and 2020. Taxpayer argues that because it paid sales tax on the purchases that use tax should not have been assessed on those items.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. [IC 6-8.1-5-1\(c\)](#). The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; See e.g., *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). An assessment, including Taxpayer's penalty assessment, is therefore presumed valid. A taxpayer must provide documentation explaining and supporting that the Department's position is wrong. Additionally, "[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).

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 person who acquires property in a retail transaction is liable for the sales tax on the transaction. [IC 6-2.5-2-1\(b\)](#). 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](#). The purchaser of the tangible personal property "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." [IC 6-2.5-2-1\(b\)](#).

Indiana also imposes a complementary excise tax called a "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\(a\)](#). "Use" means the "exercise of any right or power of ownership over tangible personal property." [IC 6-2.5-3-1\(a\)](#). The use tax is a functional equivalent to the sales tax. See *Rhoades v. Indiana Dept. of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002). To trigger the imposition of Indiana's use tax, tangible personal property must be acquired in a retail transaction. 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\(b\)](#), (c); [IC 6-2.5-3-2\(a\)](#).

The complementary relationship between sales and use tax ensures non-exempt retail transactions that escape sales tax liability remain taxed. *Id.*; *USAir, Inc. v. Indiana Dept. of State Revenue*, 623 N.E.2d 466, 468 (Ind. Tax Ct. 1993). If sales tax is paid at the time of the transaction, an exemption from use tax is granted under [IC 6-2.5-3-4](#). A statute which provides a tax exemption is strictly constructed against the taxpayer. *Indiana Dept. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974).

In support of the protest, Taxpayer's representative provided a list of specific items being protested for each tax year as well as multiple receipts and invoices. Taxpayer's representative explained that the list of items under protest was assessed use tax during an audit despite sales tax already paid on those purchases. Taxpayer provided detailed lists of forty-nine transactions for tax year 2019 and fifty transactions for tax year 2020 under dispute.

As the Indiana Tax Court has previously noted (in the context of a summary judgment motion), "the Court will not consider...exhibits...on the off chance that it might find, on its own and undirected, some fact that supports" a claim. *Express Scripts v. Indiana Dept. of State Revenue*, 170 N.E.3d 273, 279 (Ind. Tax Ct. 2021). Further, "regardless of how concise or short the document is...specific reference to the relevant portion...that contains the material fact or facts upon which the moving party relies must be made." *Miller Pipeline v. Indiana Dept. of State Revenue*, 995 N.E.2d 733, 735-36 (Ind. Tax Ct. 2013) [internal citations omitted].

Taxpayer provided over four hundred pages of documents allegedly related to the ninety-nine transactions being protested. A review of the information provided shows the majority of the documents appear to be completely unrelated to the transactions Taxpayer claims to be at issue. For example, only thirteen receipts are verifiable purchases from 2019 while seven receipts matched purchases made in 2020. The remaining receipts and invoices do not appear to be related to the purchases under protest. For the same reasoning provided in *Express Scripts* and *Miller Pipeline*, the Department is not required to sort through the multiple pages to determine whether the purchases correspond with the invoices and vice versa; it is the responsibility of Taxpayer to provide a cohesive packet of detailed information and receipts.

Taxpayer's representative also argued during the hearing that if Taxpayer made the purchases from a business with an "Indiana nexus," then it is presumed the purchaser (i.e., Taxpayer) paid sales tax. Based on this presumption, Taxpayer's representative opines that Taxpayer was not required to provide receipts or invoices showing sales tax was paid at the time of purchase. Taxpayer's representative is mistaken. Taxpayer has not provided citation to any statute, regulation, or court case to support its position that there is a presumption that if a purchase is made from a business with an "Indiana nexus" that sales tax was paid by the purchaser on the transaction. Further, the Department has always required receipts and/or invoices to show that taxes were paid when documentation is provided during an audit or the protest process.

In summary, the Department reviewed the information submitted by Taxpayer. Only a few of the receipts or invoices correspond to Taxpayer's lists of specific items under protest for tax years 2019 and 2020. Taxpayer's representative declined during the administrative hearing to provide any additional documentation. As a result, Taxpayer will be refunded approximately \$650.00 for the thirteen purchases on which it was shown Taxpayer was

charged sales tax. Due to lack of documentation for all the other purchases, Taxpayer's refund request is denied.

FINDING

Taxpayer's protest is partially sustained and partially denied.

October 18, 2023

Finding Replaces: New

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