

**Letter of Findings: 04-20231949**  
**Gross Retail and Use Tax**  
**For the Years 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 additional documents to support its argument 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 6-2.5-4-6](#); [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); *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-8](#); Sales Tax Information Bulletin 51T (September 2010); Sales Tax Information Bulletin 51T (January 2023).

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 2020 and 2021 ("Tax Years at Issue"). Pursuant to the audit, the Department determined that Taxpayer purchased tangible property to conduct its business without paying gross retail ("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 the assessment. A hearing was held. This Letter of Findings results.

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

### DISCUSSION

The Department found that during the Tax Years at Issue, Taxpayer purchased the items used for its business without paying sales tax or remitting use tax on the purchase. The Department thus assessed Taxpayer additional use tax.

Taxpayer protested and stated, in relevant part, the following:

Another representative represented the taxpayer. The representative failed to provide all of the documentation for a true, accurate, and complete examination. The representative failed to discuss the results of the examination as well. The volume of this information that should have been provided is significant per the taxpayer was, in their assessment, not considered in the examination. The information is too large to include in this protest but is available when we have a hearing.

The issue thus is whether Taxpayer provided verifiable supporting documents sufficient to demonstrate that the assessment was incorrect.

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 [D]epartment 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\(a\)](#). Pursuant to [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" 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 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 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\(a\)](#). The use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Rhoades 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. *Rhoades*, 774 N.E.2d at 1050. To trigger imposition of Indiana's use tax, tangible personal property must 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\(a\)](#).

The regulation, [45 IAC 2.2-5-8\(a\)](#), provides a general rule that "all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable." Taxpayers, including purchasers and retail merchants, are required to document such transactions that are exempt from sales and use tax under Indiana law. A statute which provides a tax exemption is strictly construed against the taxpayer. *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

To support its protest, Taxpayer in this case provided additional verifiable documentation. Upon review, the Department is prepared to agree that the assessment of the following transactions was incorrect:

Date	Reference Number	Name	Amount
11/2/2020	6108 Tools	B2B Prime	\$ 179
11/13/2020	6021 Equipment Rental Expense	CE Gwitz	\$1,450

Finally, during the audit, Taxpayer failed to provide the requested documents concerning its purchases under the "Telephone Expense" category. The Department assessed use tax accordingly. Taxpayer subsequently submitted some documents to support its protest. A review of Taxpayer's documentation showed that Taxpayer made three \$60 payments for Internet Access in February, April, and October 2020, respectively. Payments for Internet Access are nontaxable transactions. See [IC 6-2.5-4-6\(c\)](#); Sales Tax Information Bulletin 51T (September 2010), 20100929 Ind. Reg. 045100601NRA; Sales Tax Information Bulletin 51T (January 2023), 20230125 Ind. Reg. 045230018NRA. Further, Taxpayer's documentation demonstrated that the vendor charged Taxpayer a \$9.25 late

payment fee in October 2020 for not timely paying the monthly Internet Access charge. The late payment fee is also a nontaxable transaction. The Department therefore is prepared to agree that Taxpayer was not liable for the use tax on the three \$60 Internet Access payments and the \$9.25 late payment fee under the "Telephone Expense" category.

To conclude, based on the verifiable supporting documentation, the Department agrees that Taxpayer met its burden of proof demonstrating that a portion of the audit assessment was incorrect. Taxpayer remains responsible for a reduced amount of the assessment.

### **FINDING**

Taxpayer's protest is sustained in part and denied in part.

December 18, 2023

*Replaces Finding Document at: New*

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