

**Letter of Findings: 04-20241026**  
**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Merchant was required to collect and remit sales tax on transactions for which Merchant failed to obtain the buyers' exemption certificates.

### ISSUE

#### I. Gross Retail Tax - Exempt Retail Sales.

**Authority:** [IC 6-2.5-1-2](#); [IC 6-2.5-2-1](#); [IC 6-2.5-4-1](#); [IC 6-2.5-5](#) et seq.; [IC 6-2.5-8-8](#); [IC 6-2.5-9-3](#); [IC 6-8.1-5-1](#); [IC 6-8.1-5-4](#); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 2.2-8-12](#); [45 IAC 15-5-1](#); *Cash Basis Accounting; Definition*, <https://www.investopedia.com/terms/c/cashbasis.asp>.

Taxpayer argues that the Department's assessment of additional sales tax is overstated because Taxpayer has sufficient documentation to fully account for its taxable sales during the three years under audit.

### STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of growing and selling plants and garden accessories. Taxpayer is currently organized as an S Corporation.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns. In particular, the Department reviewed Taxpayer's ST-103 sales tax returns, financial statements, exemption certificates, and sales records for the years 2019, 2020, and 2021.

The Department's audit report found that Taxpayer "was unable to provide exemption certificates or other documentation supporting [an] exemption for [] listed customers." As a result, the audit concluded that "these [exempt] sales are subject to tax."

The Department also noted that the "total sales listed on [Taxpayer's] General Ledger were greater than total sales reported on the sales tax returns."

The audit concluded that, based on the "best information available," Taxpayer owed additional sales tax on otherwise unreported or undocumented in-store sales. To that end, the Department assessed Taxpayer, approximately \$14,000 in additional tax in addition to penalty and interest charges.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest.

#### I. Gross Retail Tax - Exempt Retail Sales.

### DISCUSSION

The issue is whether Taxpayer has met its burden of proof and established that the assessment of additional sales tax was either wholly incorrect or simply overstated.

As a threshold issue, it is Taxpayer's responsibility to establish that the 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong.

In assessing the audit report, the relevant Indiana law, and Taxpayer's argument, the Department bears in mind that "when [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 original audit, are entitled to deference.

Pursuant to [IC 6-2.5-2-1](#), a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. [IC 6-2.5-5](#) et seq. Retail transactions involve the transfer of tangible personal property. [IC 6-2.5-1-2](#); [IC 6-2.5-4-1](#).

A retail merchant - such as Taxpayer - is required to "collect the tax as agent for the state." [IC 6-2.5-2-1\(b\)](#). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes" [IC 6-2.5-9-3](#).

It should be pointed out that, "Every person subject to a listed tax must keep books and records 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\(a\)](#). In addition, [IC 6-8.1-5-4\(c\)](#) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times." *Id.*

Bearing in mind the record keeping requirements in [IC 6-8.1-5-4\(a\)](#), the Department's audit report noted that Taxpayer "was unable to provide exemption certificates or other documentation . . . ."

In the absence of contemporaneous and complete records, the Department was required by law to issue an assessment based upon whatever alternative and reliable means available to the Department. In particular, [IC 6-8.1-5-1\(b\)](#) provides that "If the [D]epartment 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." (*Emphasis added*). See also [45 IAC 15-5-1](#).

Taxpayer argues that the Department's audit assessment was overstated because the Department failed to recognize that Taxpayer reorganized itself during the years under consideration. During 2019, Taxpayer was organized as a C Corporation. Not so during the second half of 2019 and during the years 2020 and 2021. During those periods, Taxpayer had reorganized itself as a S Corporation. In addition, Taxpayer "changed [its] accounting method of accrual to cash basis."

Cash basis refers to a [] accounting method that recognizes revenues and expenses at the time cash is received or paid out.

Accrual account [] recognizes income at the time the revenue is earned . . . regardless of when cash is received or paid. *Cash Basis Accounting; Definition*, <https://www.investopedia.com/terms/c/cashbasis.asp>. (Last visited January 31, 2024).

The Department recognizes the arguments concerning its filing status (S Corporation and C Corporation) and the difference between recording sales on a cash or accrual basis. However, the Department's pending assessment is based upon Taxpayer's failure to document that certain sales were exempt from sales tax.

[IC 6-2.5-8-8\(b\)](#) provides as follows:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

[IC 6-2.5-9-3](#)(a) provides that in the absence of an exemption certificate, a retail merchant "has a duty to remit state gross retail or use taxes" because the merchant "holds those taxes in trust for the state and is personally liable for the payment for these taxes....."

[45 IAC 2.2-8-12](#)(b) and (c) summarize the retail merchant's responsibilities and potential liability.

(b) Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used by the purchaser for an exempt purpose.

(c) All retail sales of tangible personal property for delivery in the state of Indiana shall be presumed to be subject to sales or use tax until the contrary is established. The burden of proof is on the buyer and also on the seller unless the seller receives an exemption certificate.

Taxpayer has failed to reconcile its arguments - that Taxpayer was reorganized as an S Corporation or that Taxpayer changed its accounting methodology - with the Department's finding that Taxpayer was responsible for sales tax on undocumented retail transactions. By whatever means Taxpayer accounted for or documented its customers' purchases, the Department is unable to agree that Taxpayer has met its statutory burden under [IC 6-8.1-5-1](#)(c) of establishing that the assessment was wrong.

### FINDING

Taxpayer's protest is respectfully denied.

February 20, 2024

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