

**Letter of Findings: 04-20210074**  
**Sales and Use Tax**  
**For The Years 2017 and 2018**

**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 (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 failed to establish that the Department's assessment was incorrect.

**I. Sales and Use Tax - Exemption.**

**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 6-2.5-3-8](#); [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 463 (Ind. 2012); *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); *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 Dept. 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); *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#)

Taxpayer protests the assessment concerning sales/use tax on items purchased at its various restaurants.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation that operates fast-food restaurants throughout Indiana. For sales tax purposes, Taxpayer consolidates all its locations. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's sales for tax years 2017 and 2018. As a result of the audit, the Department determined Taxpayer owed additional tax and issued proposed assessments. Taxpayer protested the assessments and waived its right to an administrative hearing. This Letter of Findings results from the documents provided alongside Taxpayer's protest and the Department's own records. Additional facts will be provided as necessary.

**I. Sales and Use Tax - Exemption.**

**DISCUSSION**

As a part of an audit, the Department reviewed purchase invoices and determined that Taxpayer made several general purchases where sales tax was not collected at the time of purchase and for which no statutory exemption exists. The purchases included various uniform items, awards, equipment repairs, and office supplies. Additionally, the Department determined that Taxpayer purchased various items for which no documentation or vendor receipts were provided to demonstrate that sales or use tax was remitted. The Department made adjustments based on a statistical sample, resulting in a proposed assessment of tax. Taxpayer protested the assessment, asking for additional adjustments to be made based on new records becoming available.

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.* Consequently, a taxpayer must provide documentation explaining and supporting that the Department's position is wrong. See *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). 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). A taxpayer is required to walk the Court through every element of its analysis; thus, non-cogent and poorly

developed arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1144-45 (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 person who acquires property in a retail transaction is liable for the sales tax on 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 a part of its ordinary business for the purpose of reselling the property; (2) that property is 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\(a\)](#).

Under Indiana law, certain items or transactions may be exempt from tax if certain conditions are met. However, "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). [IC 6-2.5-3-8\(b\)](#) states:

If the department assesses the use tax against a person for the person's storage, use, or consumption of tangible personal property in Indiana, and if the person has already paid the use tax in relation to that property to a retail merchant who is registered under [IC 6-2.5-6](#), to the [D]epartment. . .then the person may avoid paying the use tax to the department if he can produce a receipt or other written evidence showing that he has so made the use tax payment.

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).

Along with its protest, Taxpayer provided approximately 1,300 pages of documentation. The documentation provided by Taxpayer does not alone establish precisely what the Taxpayer is protesting. As noted in *Scopelite*, poorly developed arguments are subject to waiver. Additionally, several of the documents provided by Taxpayer are irrelevant to this protest, including invoices and spreadsheets related to purchases it made in Kentucky. Taxpayer failed to demonstrate how the documentation it provided supported its claim that the proposed assessments for use tax were incorrect. For the same reasoning provided in *Express Scripts* and *Miller Pipeline*, the Department is not required to examine thousands of documents and construct an argument on Taxpayer's behalf; it is the responsibility of Taxpayer to provide a cohesive packet of detailed information and walk the Department through its analysis.

Taxpayer failed to meet its burden showing that the proposed assessments issued by the Department were incorrect.

## FINDING

Taxpayer's protest is denied.

February 29, 2024

*Replaces Finding Document at: New*

Posted: 04/24/2024 by Legislative Services Agency  
An [html](#) version of this document.