

**Letter of Findings: 04-20221023**  
**Gross Retail and Use Tax**  
**For the Years 2018 and 2019**

**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Lighting Fixture retailer failed to establish that it was not required to pay use tax on purchases of items used or consumed in conducting its business.

**ISSUE**

**I. Gross Retail and Use Tax - Taxable Purchases of Tangible Personal Property.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; *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 2.2-3-4](#); [45 IAC 2.2-3-14](#).

Taxpayer argues that the assessment of additional sales and/or use tax is unwarranted because the items purchased are not subject to sales or use tax.

**STATEMENT OF FACTS**

Taxpayer is an S corporation in the business of selling lighting fixtures to customers inside and outside Indiana. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns. The audit determined that Taxpayer made routine purchases of tangible personal property during the years under review without paying sales tax at the time of purchase. The Department assessed Taxpayer additional use tax - approximately \$1,700 - because the items were used or consumed by Taxpayer (or its sole shareholder).

Taxpayer disagreed with the \$1,700 assessment along with the assessment of additional income tax to shareholder. The income tax assessment - attributable to shareholder's additional flow through income - is addressed elsewhere in the Letter of Findings 01-20221024. An administrative hearing was conducted by telephone in order to allow Taxpayer's shareholder the opportunity to explain the basis for the protest. This Letter of Findings results.

**I. Gross Retail and Use Tax - Taxable Purchases of Tangible Personal Property.**

**DISCUSSION**

Taxpayer disagrees with the assessment of additional use tax. As such, Taxpayer has the burden of establishing that the assessment was wrong. 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).

In Taxpayer's case, it purchased items such as a speaker, microphone cable, on-line music subscription, office supplies, cleaning supplies, shoelaces, clothes steamer, clothing, as well as vehicle parts and supplies. In each instance, Taxpayer bought the item or items without paying sales taxes.

Indiana imposes a sales tax on purchases of "tangible personal property" acquired in a retail transaction pursuant to IC § 6-2.5-2-1, which states in relevant part:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

A separate, but complementary, use tax is imposed by IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed 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.

The regulation, [45 IAC 2.2-3-4](#), further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, *unless the Indiana state gross retail tax has been collected at the point of purchase. (Emphasis added).*

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due if sales tax was not paid at the time of the transaction, unless an applicable exemption is available. [45 IAC 2.2-3-14](#). Indiana law allows for a number of sales tax exemptions. However, Taxpayer has failed to designate an exemption or exemptions which governs the purchases and "use" of such items as office supplies, cleaning supplies, or shoelaces and failed to document that sales tax was paid at the time it purchased the items.

Taxpayer has not met its statutory burden under IC § 6-8.1-5-1(c) of establishing that the assessment was wrong, and it is not now required to pay the applicable use tax.

#### FINDING

Taxpayer's protest is respectfully denied.

March 30, 2022

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