DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0207
TAX ADMINISTRATION—RETURN OF ASSESSED TAX and INTEREST
FOR TAX YEARS 1993-1999

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ISSUE

I. Tax Administration—Return of Assessed Tax and Interest

Authority:		
	IC § 6-2.5-4-1(e)	**45 IAC 2.2-1-1(a)**
	IC § 6-8.1-1-1	**45 IAC 15-2-1**
	IC § 6-8.1-3-1	**45 IAC 15-5-1**
	IC § 6-8.1-5-1	
	IC § 6-8.1-10-1	

Taxpayer protests that part of the assessed tax that he can now substantiate as non-taxable services.

STATEMENT OF FACTS

Taxpayer sells computer hardware, software, forms, supplies and accessories used by automotive dealerships throughout the Midwest, including Indiana. Taxpayer did not collect and remit gross retail taxes on goods sold in Indiana until the fall of 2000. Taxpayer has conceded that he was required to collect and remit the tax, but protests 60% of the assessment. This percentage figure represents taxpayer's retroactive separation of taxable goods (40% of the assessment) from non-taxable services (60% of the assessment). Further information will be added as necessary.

I. Tax Administration—Return of Assessed Tax and Interest

DISCUSSION

Taxpayer initially protested the entire assessment, but eventually, through discussions and correspondence with the Department, admitted liability and paid the assessment, plus interest. Taxpayer now states he has reconfigured his records to show how goods and services should have been broken down during the tax years at issue. This percentage figure represents taxpayer's retroactive separation of taxable goods (40% of the assessment) from non-taxable services (60% of the assessment).

Pursuant to IC § 6-8.1-3-1(a), the Department "has the primary responsibility for the administration, collection, and enforcement of the listed taxes," including "the state gross retail and use taxes." (IC § 6-8.1-1-1). Under 45 IAC 15-2-1, the Department was established for the purpose of administering, collecting and enforcing all taxes placed under its authority." Pursuant to IC § 6-8.1-5-1(a), the Department "shall make a proposed assessment of the amount of the unpaid tax" when an audit reveals discovers a failure to collect and remit the tax. *See also*, 45 IAC 15-5-1.

Under IC § 6-8.1-5-1(b), 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" taxpayer.

Taxpayer has not met his burden of proof in this matter. Taxpayer has admitted his retail transactions were taxable in Indiana, and that in order to take advantage of the non-taxable nature of services, he would have had to bill customers for parts and service separately. (IC § 6-2.5-4-1[e] and 45 IAC 2.2-1-1[a]. Taxpayer did not do so at the time the taxable transactions occurred. Rather, taxpayer, now that he is aware of his obligations under Indiana tax law, is seeking to have 60% of the assessment returned to him because he can retroactively separate services from goods. Taxpayer cannot use such retroactive devices to ameliorate his tax liability.

FINDING

Taxpayer's protest is denied.

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