

Letter of Findings Number: 05-0303
Sales Tax
For Tax Year 2001-04

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ISSUE

I. Sales Tax—Best Information Available

Authority: [IC 6-8.1-3-7](#); [IC 6-8.1-5-1](#); [IC 6-8.1-5-4](#)

Taxpayer protests the imposition of sales tax for the years at issue.

STATEMENT OF FACTS

Taxpayer is a small used car business operated from the owner's home residence. As the result of an investigation, the Indiana Department of Revenue ("Department"), issued proposed assessments for individual income tax for the tax years 2001 through 2004. Taxpayer protests these assessments. Further facts will be supplied as required.

I. Sales Tax—Best Information Available

DISCUSSION

Taxpayer protests the imposition of sales tax. Taxpayer is a small used car business. The business is operated from the owner's home residence. As the result of an investigation, the Department determined that taxpayer owed additional sales tax on cars sold by the used car business. Taxpayer states that it is certain that it does not owe these taxes and that it remitted every cent of taxes collected. A review of the Department's report shows that the Department did not question taxpayer's remittance of taxes collected, but rather questioned if sufficient taxes were collected in the first place.

Taxpayer states that it is certain that it does not owe these taxes. Taxpayer also states that the Department did not take into account certain costs of running the business. The Department's report explained that taxpayer's owner and operator also operated another business from his home residence and expensed supplies and home office expenses to that business. Given the size and expenses of the car business, the Department determined that it was unlikely that taxpayer would have expenses beyond those of the other business which were already taken into account. Taxpayer has not produced documentation to refute this position.

Taxpayer states that the Department is unable to prove that it owes these taxes and that the Department simply made up numbers for its assessments. Taxpayer also states that even if it did not collect sales tax at the time of the sales, the purchaser must have paid sales tax when licensing the car. Taxpayer asserts that Indiana cannot collect sales tax twice. Taxpayer has provided no documentation supporting its position that the cars were licensed for use on Indiana roads or that sales tax was paid by the purchaser at any time. The Department notes that, under [IC 6-8.1-5-1\(b\)](#), the burden of proving a proposed assessment wrong rests with the taxpayer.

The investigation report explained that taxpayer was unable to produce records for most car sales for the years in question. The relevant statute is [IC 6-8.1-5-4](#), which states:

(a) 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. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

(1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or

(2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction. In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.

(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

The report explained that the Department reviewed what records taxpayer was able to produce, along with information taxpayer reported to the Indiana Bureau of Motor Vehicles (BMV) regarding car sales. The BMV information was received under [IC 6-8.1-3-7\(b\)](#), which states:

All agencies of the state of Indiana shall cooperate with the department in the administration of the listed taxes and shall furnish to the department any information relevant to the administration and collection of the

listed taxes that the department requests.

Also, [IC 6-8.1-5-1\(a\)](#) states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

After reviewing the documents taxpayer was able to produce, the Department determined that the documentation was insufficient and that it was necessary to extrapolate numbers to reach the assessments. The Department used industry-specific reference materials to determine that the cost of sales for the smallest size used car lots is approximately 81.76 percent. Taxpayer qualifies for this category. The Department then used this figure to determine the amount of sales tax due on each of the car transactions, incorporating taxpayer's information where available.

In conclusion, taxpayer states that it does not owe any additional tax and that the Department simply guessed at the amounts of income. Taxpayer failed to keep all of the records required to be kept under [IC 6-8.1-5-4](#). The Department used the best information available to it to determine the amount of tax due under [IC 6-8.1-5-1\(a\)](#). The best information included information received from the BMV under [IC 6-8.1-3-7\(b\)](#). Taxpayer has not provided any documentation in support of its protest and has not met the burden of proving the proposed assessment wrong, as required by [IC 6-8.1-5-1\(b\)](#).

FINDING

Taxpayer's protest is denied.

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