

DEPARTMENT OF STATE REVENUE

0420050544.LOF

Letter of Findings Number 05-0544
Responsible Officer
Sales Tax
For Tax Period May, 1998-November, 2004

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ISSUE

I. Sales Tax - Responsible Officer Liability

Authority: IC § 6-2.5-9-3; IC § 6-8.1-5-1(b).

The taxpayer protests the assessment of corporate sales taxes against him as a responsible officer.

STATEMENT OF FACTS

The taxpayer was associated with a corporation that did not remit the proper amount of sales taxes to Indiana for the tax period May 1998 through November 2004. The Indiana Department of Revenue assessed the outstanding corporate sales taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment. The taxpayer presented certain documentation, but failed to avail himself of the opportunity to participate in a hearing. This Letter of Findings is based on the documentation available at the time of the scheduled hearing.

I. Sales Tax - Responsible Officer Liability

DISCUSSION

The proposed sales tax liability was issued under authority of IC § 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. IC § 6-8.1-5-1(b). The taxpayer bears the burden of proving that the assessment is incorrect. *Id.*

The taxpayer submitted documentation indicating that the corporation was dissolved in November 2004. Since none of the taxes in the assessment were for tax periods after November 2004, the dissolution of the corporation does not affect the predissolution sales tax liability.

Further, the taxpayer contended that, although his name was on the incorporation documentation and departmental records, he had no involvement with the corporation. He argued that his name was included on the forms as a favor to the parties actually responsible for remitting the sales taxes to the state. Although the taxpayer submitted documentation showing that other parties may have had a duty to remit corporate sales taxes to the state, he failed to sustain his burden of proving that he was not also a party responsible for the payment of corporate sales taxes to the state.

FINDING

The taxpayer's protest is denied.

Posted: 08/02/2006 by Legislative Services Agency

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