

Letter of Findings Number: 06-0453
Sales/Use Tax
For the Years 2004-2005

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ISSUE

I. Tax Administration-Best Information Available

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4

Taxpayer protests the Department's assessment of sales tax with respect to Indiana sales based on the Department's methodology.

STATEMENT OF FACTS

Taxpayer is a corporation that operates two restaurants, one in Indiana and one in Illinois. The Indiana restaurant opened in 2004. During 2004 and 2005, Taxpayer deposited its credit card receipts into separate checking accounts for each restaurant. However, Taxpayer's cash receipts were deposited into one bank account, without records or other information that indicated which restaurant earned which receipts.

The Department conducted an audit of Taxpayer's Indiana restaurant for 2004 and 2005. As a result of the audit, the Department determined that Taxpayer did not keep adequate records to substantiate Taxpayer's amount of receipts as reported in its sales tax returns. The Department issued Taxpayer a best information available assessment. The Department used the industry average of wages to sales and extrapolated Taxpayer's sales based on Taxpayer's wages paid. Taxpayer protested the assessment. The Department conducted a hearing and this Letter of Findings results. Additional facts are supplied as necessary.

I. Tax Administration-Best Information Available

DISCUSSION

Under IC § 6-8.1-5-1(a) "[i]f 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." Further, under IC § 6-8.1-5-1(b), "[t]he 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." This is the nature of the Department's assessment.

Under IC § 6-8.1-5-4(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.

The issue before the Department is whether the records submitted by Taxpayer to the Department are sufficient, and whether the records substantiate Taxpayer's protest.

Taxpayer protests the estimated 2005 sales. Taxpayer asserts that its July 2005 to December 2005 sales declined between twenty and sixty percent from the corresponding periods in 2004. Thus, Taxpayer argues that the 2005 sales should be reduced approximately thirty percent. According to Taxpayer, its sales should have been \$350,000 rather than \$500,000 as proposed by the Department.

Taxpayer also provided its deposits for its credit card receipts from the Indiana restaurant and the intermingled bank records for Taxpayer's two restaurants. The records are consistent with Taxpayer's argument that sales declined from 2004 to 2005. The exact amount of Taxpayer's sales for 2005 is subject to audit verification.

Taxpayer also indicated that the sales tax adjustments may affect Taxpayer's withholding tax and the individual owners' income tax liabilities. Any withholding tax and income tax effects that otherwise result from this Letter of Findings are subject to audit determination.

FINDING

Subject to audit review, Taxpayer's protest is sustained in part and denied in part.

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