

DEPARTMENT OF STATE REVENUE

04-20060334.LOF

Letter of Findings Number: 06-0334
Sales/Use Tax
For the Years 2000-2004

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ISSUE

I. Sales Tax—Computation Errors**Authority:** IC § 6-8.1-5-1

Taxpayer protests several claimed computational errors.

STATEMENT OF FACTS

Taxpayer is a company that operates a restaurant in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer and assessed additional tax, penalty, and interest. Taxpayer protested several factual issues with respect to the assessment. The Department conducted a hearing and this Letter of Findings results. Additional facts will be supplied as necessary. Any issue not specifically addressed in this Letter of Findings is considered to be resolved in a manner consistent with the Department's audit.

I. Sales Tax—Computation Errors

DISCUSSION

Taxpayer's protest raises three issues. IC § 6-8.1-5-1(b) provides in relevant part

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.

The issue is whether Taxpayer has provided sufficient information to substantiate its contentions.

Taxpayer's first point of contention is with respect to Taxpayer's previously reported 2000 and 2001 sales. In particular, Taxpayer asserts that Taxpayer previously reported more sales to the Department than the audit indicated. Taxpayer maintained that it reported \$18,000 of sales for 2000 and \$136,000 for 2001. However, the Department based its assessment on \$7,000 reported sales for 2000 and \$114,000 for 2001. Taxpayer has provided sufficient information to substantiate the higher reported sales figures for 2000 and 2001.

Taxpayer's second point of contention is with respect to its 2001 and 2002 sales. In particular, Taxpayer asserts that the Department computed Taxpayer's taxable sales on the gross price of its menu items. By using the gross price, the Department effectively disallowed discounts for various sales and amounts of voided sales, for which Taxpayer collect nothing.

Taxpayer notes that its receipts and accounting records list the full menu price of a particular purchase. Taxpayer then notes that the discounts and voided sales appear as a separate line item on its receipts and accounting records (for 2002). Taxpayer collects payment on the discounted price, or nothing for void sales. Taxpayer contends that the actual consideration received from customer, not the full price of the customer's purchase, should determine the amount of Taxpayer's taxable sales. Taxpayer has provided sufficient information to support its contentions with respect to its receipts subject to sales tax.

Taxpayer's third point of contention is with respect to its 2004 sales. Taxpayer originally computed its total sales for 2004 as roughly \$676,000. The Department based its assessment on the \$676,000 amount. However, Taxpayer determined that it made an addition error in its original computation and recomputed its 2004 sales as roughly \$516,000. Taxpayer provided records detailing its 2004 daily sales. Taxpayer has provided sufficient information to substantiate its arguments with respect to the differences in 2004 sales.

FINDING

Taxpayer's protest is sustained. The final determination of Taxpayer's remaining liabilities is subject to audit review.

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