

Letter of Findings Number: 07-0342
Sales and Withholding Tax
Responsible Officer
For the Tax Period 2004-2006

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ISSUES

1. Sales and Withholding Tax - Responsible Officer Liability

Authority: IC § 6-2.5-9-3; IC § 6-3-4-8(g); IC § 6-8.1-5-1(b).

The Taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The Taxpayer was an officer and employee of a corporation that did not remit the proper amount of withholding and sales taxes to the state. The Indiana Department of Revenue (Department) assessed these unpaid sales and withholding taxes against the Taxpayer personally. The Taxpayer protested this assessment. A hearing was held and this Letter of Findings results.

1. Sales Tax and Withholding Tax - Responsible Officer Liability

DISCUSSION

Notices of proposed assessments are prima facie evidence that the Department's claim for unpaid taxes is valid. IC § 6-8.1-5-1(b). The Taxpayer has the burden of proving that the Department incorrectly imposed the assessment. *Id.*

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.

The proposed withholding taxes were assessed against the Taxpayer under authority of IC § 6-3-4-8(g), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The Taxpayer submitted documentation that was sufficient to sustain her burden of proving that she was not personally responsible for the payment of the corporate sales and withholding taxes.

FINDING

The Taxpayer's protest is sustained.

Posted: 10/03/2007 by Legislative Services Agency

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