

Letter of Findings: 07-0107
Gross Retail Tax
For the Years 2004 and 2005

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ISSUE

I. Unreported Taxable Sales – Gross Retail Tax.

Authority: IC § 6-8.1-5-1(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-4.

Taxpayer argues that the Department of Revenue overstated the amount of its income subject to gross retail tax.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation which was organized in October 2004 and which elected S-Corporation status. Taxpayer owned and operated a small retail store offering a variety of general merchandise. The retail store moved into and out of three different locations before the taxpayer filed for bankruptcy in March 2006.

The Department of Revenue (Department) conducted an audit review of taxpayer's business records and tax returns for 2004 and 2005. The audit report stated that taxpayer "collected sales tax during the audit period, but not all of the taxable sales were reported that were transacted."

The audit review was difficult because – at the time the review was conducted – taxpayer "did not provide any purchase invoices for examination" and did not "maintain adequate sales records or all of the cash register tapes."

For the year 2004, the audit relied on taxpayer's 2004 federal income tax return. Based on that 2004 return, the audit concluded that taxpayer owed approximately \$700 in sales tax. However, no federal income tax return was available for 2005. Therefore, the audit extrapolated the information available from the 2004 return and concluded that taxpayer had "additional taxable sales" of approximately \$107,000 during 2005. Based on that \$107,000 figure, the audit concluded that taxpayer owed approximately \$6,000 in sales tax for 2005.

The audit concluded that taxpayer owed an additional \$6,700 in tax together with a ten-percent penalty. Taxpayer protested that determination, and a telephone hearing was conducted with taxpayer's designated power of attorney. This Letter of Findings results.

I. Unreported Taxable Sales – Gross Retail Tax.

DISCUSSION

Taxpayer maintains that the amount of additional sales tax is incorrect because the audit report overstated the amount of retail sales subject to sales tax.

The taxpayer is required to maintain records sufficient to determine the amount of tax liability. IC § 6-8.1-5-4 requires that, "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."

It is apparent from the audit report that taxpayer failed to maintain adequate records and failed to provide in a timely manner the information available necessary. A relatively uncomplicated audit report took six months to complete because the taxpayer was unable or unwilling to supply complete records.

The Department's authority to assess the additional sales tax is based upon IC § 6-8.1-5-1(a) which states that, "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."

Taxpayer has the burden of demonstrating that the proposed assessment of sales tax was incorrect. IC § 6-8.1-5-1(b) in part states that, "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."

In support of its argument that the proposed assessment is incorrect, taxpayer's representative has produced a day-by-day spreadsheet of "sales" indicating that "copies of sales receipts [are] available upon request."

The Department reasonably concluded that taxpayer failed to report the proper amount of tax due. The audit report was plainly justified in calculating the amount of taxable sales based on the taxpayer's 2004 federal return. Taxpayer's own belated re-creation of 2004 day-to-day sales corresponds closely with the amount of sales listed on its 2004 federal return. In comparing the amount listed on the federal return with taxpayer's re-creation of its day-to-day sales, there is little to recommend adjusting the amount of sales tax due for 2004. Taxpayer has failed to meet its statutory burden of demonstrating this amount requires reconsideration, review, or adjustment.

However, there is a substantial difference between audit's conclusion that taxpayer owes \$6,000 in sales tax for 2005 and the amount taxpayer believes it owes for the same period. The audit calculated that taxpayer had

\$107,000 in taxable sales during 2005. Taxpayer calculates that it had approximately \$54,000 in sales during 2005. In support of its conclusion, taxpayer offers a "bare-bones," unverified, and unsubstantiated spreadsheet of its 2005 day-to-day sales with the offer to make available the original source documentation available "upon request."

Taxpayer has failed to conclusively establish that the assessment of 2005 sales tax is incorrect. Taxpayer's list of its purported day-to-day sales is not sufficient to rebut the presumption that the audit's conclusion was incorrect. What taxpayer has done is raise a legitimate question of whether or not the audit's determination of taxpayer's 2005 taxable sales is overstated.

Subject to audit review and subject to taxpayer's ability to promptly provide the audit source documents establishing that its gross sales were \$54,000, taxpayer's protest of the 2005 sales tax assessment is sustained.

FINDING

Taxpayer's protest of the 2004 sales tax assessment is denied. Taxpayer's protest of the 2005 assessment is sustained subject to audit verification.

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