

Letter of Findings: 07-0419
Gross Retail Tax
For 1998 through 2005

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ISSUE

I. Tax Payment – Gross Retail Tax.

Authority: IC § 6-8.1-8-1(a).

Taxpayer argues that a "Bonded Promissory Note" was sufficient to pay a Gross Retail Tax assessment.

STATEMENT OF FACTS

Taxpayer and his wife conduct certain Indiana business activities. Taxpayer had an Indiana sales tax account but closed the account prior to 1998. The Department of Revenue (Department) conducted a sales tax audit. Although the auditor contacted taxpayer in an effort to obtain taxpayer's business and tax records, taxpayer failed to supply the records but offered documents purporting to establish that Indiana could not impose an income tax on United States citizens. The audit concluded that the documents were irrelevant and made an effort to determine the amount of taxpayer's taxable sales. The audit projected taxable sales best upon the "best information available" which included a limited number of invoices. The audit determined that taxpayer owed sales and use tax for 1998 through 2005. In addition, the audit concluded that the 100 percent "fraud" penalty was appropriate. As a result, the Department sent notices of proposed assessment totaling approximately \$130,000.

Taxpayer submitted a protest arguing that the amount of tax and penalty assessed had been paid by means of a "Bonded Promissory Note" taxpayer previously forwarded to the Department. An administrative hearing was conducted during which taxpayer stated that he had no objection to the amount of assessment but that "Bonded Promissory Note" had satisfied the total amount owed.

I. Tax Payment – Gross Retail Tax.

DISCUSSION

Taxpayer argues that a "Bonded Promissory Note" in the amount of \$160,000 was sufficient to satisfy the amount of proposed sales and use tax assessment. The "Bonded Promissory Note" obligates, "Henry M Paulsen, Jr., Secretary of the Treasury, UNITED STATES DEPARTMENT OF THE TREASURY" to pay the Indiana Department of Revenue \$160,000. The putative promissory note is drawn on the taxpayer's "pass through account... for the purpose of discharging any past, present, or future liabilities express or implied attached to" taxpayer's social security number. Taxpayer "unconditionally promise[s] to pay or cause to be paid, the exact sum of (\$160,000) with interest or other charges, payable upon present of this BONDED PROMISSORY NOTE.... properly endorsed on or after July 17, 2007 at the UNITED STATES DEPARTMENT OF THE TREASURY, 1500 Pennsylvania Ave, NW, Washington, DC 20220." (Emphasis in original).

Without the slightest suggestion of irony, taxpayer directs the Department to seek payment of the sales and use tax assessment from the United States Treasury and that the "Bonded Promissory" note is sufficient to satisfy that assessment. Taxpayer errs. IC § 6-8.1-8-1(a) provides a number of payment options as follows: "A person may make a tax payment: (1) in cash; (2) by bank draft; (3) by check; (4) by cashier's check; (5) by money order; (6) by credit card, debit card, charge card, or similar method; or (7) if approved by the department, by an electronic fund transfer." There is nothing in IC § 6-8.1-8-1(a) which indicates that the Department is required to accept promissory notes in payment of a tax liability.

Even if the Department were to conclude that taxpayer's "Bonded Promissory Note" is anything other than an imaginative flight-of-fancy, taxpayer has not resolved the unpaid sales and use tax assessment. Taxpayer owes sales and use tax, penalties, and interest. The assessment remains unpaid.

FINDING

Taxpayer's protest is denied.

Posted: 12/05/2007 by Legislative Services Agency
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