

Letters of Finding: 09-0002; 09-0003
Judgment
For Gross Retail Tax Due and Owing for Years 2003 through 2008

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Jeopardy Assessment – Gross Retail Tax.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); IC § 6-8.1-5-3(a); IC § 6-8.1-5-4(a); IC § 6-8.1-5-4(b).

Judgment Debtors argue that the Department of Revenue's judgments overstate the actual amount of the underlying tax liability.

II. Tax Administration – Fraud Penalty.

Authority: IC § 6-8.1-10-4.

Judgment Debtors maintain that the Department of Revenue's judgments, to the extent they reflect a 100 percent fraud penalty, are erroneous.

STATEMENT OF FACTS

Judgment Debtors – as persons against whom a court judgment ordering them to pay money has been obtained and remains unsatisfied – are two individuals admittedly in the business of selling dogs. The Department of Revenue (Department) and the Office of the Attorney General (OAG) conducted an investigation of Judgment Debtors' business records, made a determination that Judgment Debtors failed to collect sales tax, and obtained a search warrant enabling the Department to obtain Judgment Debtors' business records. As set forth in the Probable Cause Affidavit, "The OAG seized hundreds of sales receipts for dog sales corresponding to tax years 2003 through 2008" and that, "None of the receipts for this period stated a sales tax separate from the sales price." The records revealed retail transactions ranging in an amount between approximately \$100 and \$20,000.

As a result of the review of the available records, the Department issued "Jeopardy Assessments" and "Jeopardy Tax Warrants" for an amount of uncollected and unremitted sales tax. Those tax warrants were filed in an Indiana court of competent jurisdiction and thereby became a final judgment of that court in favor of the Department (as "Judgment Creditor") and against the Judgment Debtors. Judgment Debtors challenge the amount of the underlying judgment. A post-judgment administrative hearing was conducted during which Judgment Debtors' representative explained the basis for the protest. The Judgment Debtors have the responsibility of persuading the Department that the tax warrants, which were reduced to court judgment, were filed in error.

I. Jeopardy Assessment – Gross Retail Tax.

DISCUSSION

At the outset, it should be noted that Judgment Debtors do not argue that they were not "retail merchants" entering into "retail transactions" or that they were not required to collect sales tax and that – as a result of their failure to do so – that they are not now liable for the tax. In addition Judgment Debtors suggest that they operated a "not-for-profit rescue that took [non-taxable] donations" and that the Department failed to differentiate between the prices charged to customers for the dogs and the amounts paid to ship the animals. Further, Judgment Debtors argued that the Department is required to return the confiscated animals along with the records seized from Judgment Debtors' premises. However, Judgment Debtors have failed to develop any of these arguments and failed to specifically address those arguments during the hearing. Therefore, these ancillary issues are moot and will not be addressed in this Letter of Findings and, in any event, do not persuade the Department that the tax warrants were erroneous.

Indiana law provides for the issuance of a jeopardy assessment, "If at any time the department finds that a person owing taxes intends to quickly leave the state, remove his property from the state, conceal his property in the state, or do any other act that would jeopardize the collection of those taxes...." IC § 6-8.1-5-3(a). Under those circumstances, "[T]he department may declare the person's tax period at an end, may immediately make an assessment for the taxes owing, and may demand immediate payment of the amount due without providing the notice required in [IC 6-8.1-8-2](#)." *Id.*

Indiana law requires that the Department make an assessment of taxes when it believes that the taxpayer has failed to report the amount of tax due. "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." IC § 6-8.1-5-1(b) (Emphasis added).

The Department's determination as to the amount of tax due under IC § 6-8.1-5-1(c), is deemed to be "prima facie evidence that the department's claim for the unpaid tax is valid." That same section of Indiana law goes on

to state that "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Id.

Judgment Debtors presented a summary of the receipts available both to themselves and the Department. The Judgment Debtors argue that this summary supports their proposition that the sales tax assessments should be substantially reduced. However, Judgment Debtors ignore the fact that the receipts represent only an undetermined portion of the sales which occurred during the periods at issue and that Judgment Debtors admit that they have only the sketchiest of recollections as to when their business began, how many animals they sold, how many animals were "adopted," and whether they bred the animals themselves or purchased the animals from other dealers. Judgment Debtors are unable to produce bank records which would provide at least some rational basis for determining the extent and nature of their business operation. Judgment Debtors failed in their primary responsibility to keep and maintain records sufficient to determine the Judgment Debtors' sales tax liability. IC § 6-8.1-5-4(a) 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." In addition, the law requires that, "A person must retain the books and records... for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return...." IC § 6-8.1-5-4(b). In addition, Judgment Debtors operated their retail business using various business names; Judgment Debtors also adopted numerous individual aliases in conducting their business operation and on documents submitted to the Department.

Judgment Debtors entered into retail transactions valued in the thousands of dollars, failed to collect sales tax, maintained fraudulent and/or incomplete records, and failed to file tax returns. Judgment Debtors cannot now be heard to complain of the result. Judgment debtors have failed to persuade the Department that it issued the tax warrants in error.

FINDING

Judgment Debtors' protest is denied.

II. Tax Administration – Fraud Penalty.

DISCUSSION

Because of Judgment Debtors' failure to file sales tax returns, a 100 percent penalty was assessed and became part of the Department's court judgment against the Judgment Debtors. IC § 6-8.1-10-4 states in part that, "If a person fails to file a return or to make a full tax payment with that return with the fraudulent intent of evading the tax, the person is subject to a penalty. The amount of the penalty imposed for a fraudulent failure described in subsection (a) is one hundred percent (100 [percent]) multiplied by: (1) the full amount of the tax, if the person failed to file a return; or (2) the amount of the tax that is not paid, if the person failed to pay the full amount of tax."

The Judgment Debtors sold numerous animals worth thousands of dollars. By failing to file tax returns, the Judgment Debtors effectively represented to the Department that they had not sold items of "tangible personal property" to their customers. The Department unwittingly accepted the Judgment Debtors' fraudulent representations and the state of Indiana was injured having been deprived of tax revenue lawfully due and owing. The Department was justified in concluding that Judgment Debtors acted with intent to deceive. The Judgment Debtors have not persuaded the Department that the portion of the court judgment representing the fraud penalty is in error.

FINDING

Judgment Debtors' protest is denied.

SUMMARY

The Judgment Debtors have failed to persuade the Department that the tax warrants were issued in error. Nonetheless, the Department recognizes its ongoing responsibility to seek modification of the judgment if the Judgment Debtors are able to present evidence sufficient to warrant modifying the amount of that judgment. The Judgment Debtors are free to at any time to provide the Department with probative evidence that the tax warrants were issued in error. Until such time, however, the Department's court judgments against the Judgment Debtors remain unmodified.

Posted: 04/29/2009 by Legislative Services Agency
An [html](#) version of this document.