

## DEPARTMENT OF STATE REVENUE

04-20090326.LOF

**Letter of Findings Number: 09-0326  
Sales and Use Tax  
For The Tax Years 1999-2001**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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.

**ISSUE**

**I. Sales and Use Tax—Imposition.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-5-4.

Taxpayer protests the assessment of sales and use tax.

**STATEMENT OF FACTS**

Taxpayer is an S-Corporation that incorporated in Indiana. Taxpayer registered as a retail merchant in 1998 and filed one sales tax return for the 1998 tax year. Taxpayer was a non-filer for sales and use tax purposes for the tax years in question. In August of 2008, Taxpayer filed a BT-100 to close its sales tax account. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax for the 1999 through 2001 tax years. The Department determined that Taxpayer's records were inadequate. As a result of the Department's audit, the Department issued proposed assessments of sales and use tax for the years in question based on best information available. Taxpayer protested the imposition of sales and use tax. The Department conducted an administrative hearing, and this Letter of Findings results.

**I. Sales and Use Tax—Imposition.**

**DISCUSSION**

Taxpayer protests the imposition of sales tax on items which Taxpayer sold as a retail merchant and upon which the Department determined that sales tax should have been collected. Also, Taxpayer protests the imposition of use tax on items which Taxpayer consumed in the course of its business operations. Taxpayer argues that the assessment was excessive because the findings are unreasonable and unfair.

Pursuant to IC § 6-8.1-5-1(b):

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. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

IC § 6-8.1-5-1(c), in relevant part, provides:

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.

IC § 6-8.1-5-4(a) provides:

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. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer asserts that the assessment was unreasonable and unfair. During the course of the protest, the Department requested that Taxpayer submit documentation to support its assertion. However, Taxpayer did not submit any documentation. Moreover, Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department is required to accept Taxpayer's assertions as to the nature of the transactions without providing the supporting documentation. Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer failed to produce any documentation that demonstrates that the Department's assessment was incorrect, then Taxpayer has failed to meet its burden of demonstrating that the Department's proposed assessment was not correct.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 01/27/2010 by Legislative Services Agency*

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