DEPARTMENT OF STATE REVENUE

04-20090215.LOF

Letter of Findings: 09-0215
Gross Retail Tax
For the Years 2006 and 2007

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ISSUES

I. Gross Retail Tax – Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of sales tax on the leases of its horses.

II. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer, an Indiana horse ranch, leases its horses, provides riding lessons, boarding, animal training, and veterinary services, as well as sells horse feed. Pursuant to an audit, the Indiana Department of Revenue (Department) assessed Taxpayer sales tax, interest, and penalty on the leases of its horses during 2006 and 2007. Taxpayer timely protested the assessments. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Gross Retail Tax – Imposition.

DISCUSSION

After the audit, the Department assessed Taxpayer sales tax on its 2006 and 2007 leases of horses because Taxpayer failed to collect the sales tax due and remit to the Department. Taxpayer, to the contrary, claimed that the Department's audit assessed sales tax on the leases of the horses which also included horse shoeing and horse boarding, non-taxable transactions.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-2.5-2-1 provides:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Taxpayer is a registered retail merchant. Thus, Taxpayer is responsible for collecting the sales tax on the retail transactions of leasing its horses and selling animal feed to its customers and remitting to the Department. In this instance, Taxpayer only maintained a general ledger (Statements of Revenues and Expenses) concerning its business operation. Taxpayer's general ledger contained taxable and non-taxable transactions. The taxable transactions included categories for "Feed Sales," "Horse Leasing," "Special Occasion Income," and "Cabin Rental." The non-taxable transactions included categories for, but not limited to, "Animal Clinic," "Horse Shoeing Income," "Horse Boarding," "Horse Training," and "Riding Lessons." Both Taxpayer and the Department agreed that while revenues derived from the horse leasing transactions were subject to sales tax, revenues derived from horse shoeing and horse boarding were not subject to sales tax. The Department's audit then compared the total taxable sales with the taxable sales which Taxpayer reported to the State of Indiana in 2006 and 2007 (Reported Taxable Sales). After that, the Department subtracted Taxpayer's Reported Taxable Sales from the total taxable sales to arrive at the additional taxable sales due, and assessed sales tax, interest, and penalty accordingly.

IC § 6-8.1-5-1(b), in part, states "[i]f 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."

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 claimed that it mistakenly included the revenues of horse shoeing and horse boarding into the

category of the horse leasing. Thus, Taxpayer believes that the audit erroneously assessed additional sales tax on these non-taxable transactions.

To support its protest, Taxpayer submitted copies of contracts showing that Taxpayer entered into two separate agreements with its customers. One type of agreement was Horse Lease and Facility Use Release (Horse Leasing/Horse Shoeing). Notably, Taxpayer's Horse Leasing/Horse Shoeing agreement had an elective provision for horse shoeing. The other type of agreement was Boarding Stable Agreement (Horse Boarding). Taxpayer further stated that it leased horses to individual customers (Lessees). Lessees signed both Horse Leasing/Horse Shoeing agreement and Horse Boarding agreement when they leased the horses. Taxpayer charged Lessees $10 for horse leasing, $45 for horse shoeing, and $215 (or $300) for horse boarding per month. Thus, Taxpayer maintained that only the $10 monthly charges for horse leasing were subject to sales tax.

Although Taxpayer provided its Horse Leasing/Horse Shoeing as well as Horse Boarding agreements, Taxpayer's documentation failed to substantiate its claim. The Department's audit separated the horse leasing (taxable sales) as well as horse shoeing and horse boarding (non-taxable sales) in page six of the audit summary. Taxpayer's documentation did not show that the Department's audit included horse shoeing and horse boarding (non-taxable sales) into the horse leasing (taxable sales).

Additionally, Taxpayer provided a single-page summary that listed the names of Lessees and the horses that they leased, separate charges on each lease, and the total amount Lessees paid. However, the information in the summary was not consistent with either the information in the agreements provided by Taxpayer or the information stated in the Department's audit report. In addition to these inconsistencies, Taxpayer's summary also contained a notation for "unknown deposits" which Taxpayer was not able to explain or document.

Given the facts mentioned above, Taxpayer has not met its burden of demonstrating that the proposed assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer also protests the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

(1) fails to file a tax return;
(2) fails to pay the full amount of tax shown on the tax return;
(3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
(4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

45 IAC 15-11-2(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in 45 IAC 15-11-2(c), in part, as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;
(2) judicial precedents set by Indiana courts;
(3) judicial precedents established in jurisdictions outside Indiana;
(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer failed to provide sufficient documentation establishing that its failure to pay tax or timely remit tax was due to reasonable cause and not due to negligence.

FINDING

Taxpayer's protest on the imposition of the negligence penalty is denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest on the horse leasing is respectfully denied. Taxpayer's protest on the imposition of the negligence penalty is also denied.

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