

Supplemental Letter of Findings: 09-0051
Sales Tax
For the Years 2005, 2006, 2007

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ISSUES

I. Sales Tax – Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of additional sales tax.

II. Tax Administration – Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the assessment of the negligence penalty.

STATEMENT OF FACTS

Taxpayer is a distributor of cleaning supplies and packaging material. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer and assessed additional sales and use tax, as well as interest and penalty. Taxpayer protested the assessments and the penalty. A hearing was held. Subsequent to the hearing, Taxpayer presented extensive documentation in support of its protest. Given that no legal issues were implicated, a determination was made to review Taxpayer's documentation of its protest in a supplemental audit. Taxpayer withdrew its protest at the Department's suggestion with a reservation of its right to request rehearing if the supplemental audit did not resolve its protest. Taxpayer requested rehearing subsequent to the supplemental audit and this Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales Tax – Imposition.

DISCUSSION

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a). The person who acquires property in a retail transaction is liable for the tax on the transaction and, unless exempt, shall pay the tax to the retail merchant. The retail merchant shall collect the tax as agent for the state. IC § 6-2.5-2-1(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. IC § 6-8.1-5-1(a). 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. IC § 6-8.1-5-4 (a). A person must allow inspection of the books and records and returns by the Department or its authorized agents at all reasonable times. IC § 6-8.1-5-4 (c). 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 § 6-8.1-5-1(b); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

After the hearing, Taxpayer provided additional documentation that demonstrated it did not have additional taxable sales. All along Taxpayer had a correct record of the sales tax it collected and recorded - and subsequent to the hearing Taxpayer confirmed the sales tax collected on an invoice-by-invoice basis for all years at issue. Taxpayer's reported taxable sales were based on an extrapolation from the sales tax collected, and, therefore, were also correctly reported. However, in recording and reporting its total sales, Taxpayer inadvertently included the six percent sales tax in that number, thus overstating its total sales. Taxpayer then compounded its error when it reported its exempt sales as the difference between the correctly stated taxable sales and the overstated total sales, thus resulting in overstated exempt sales.

The Department's audit found that Taxpayer had overstated its exempt sales and assumed, without the benefit of the documentation Taxpayer presented after the hearing, that the overstatement of exempt sales should be taxable sales, when in reality the overstatement of total sales and the overstatement of exempt sales simply cancelled each other out.

Taxpayer has demonstrated that it did not have additional taxable sales for the years at issue.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration – Ten Percent Negligence Penalty.

DISCUSSION

The Taxpayer also protested the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1 which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to penalty.

Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

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 standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) 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 has established that it did not underreport its taxable sales, therefore, there is no subsequent penalty to assess.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer's protest of the assessment of additional sales tax is sustained, as is its protest of the negligence penalty.

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