

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2010-06 ST
August 25, 2010

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**Sales Tax and Adjusted Gross Income Tax – Liability of Practitioner Filing Returns**

A practitioner ("Practitioner") is seeking an opinion as to whether Practitioner assumes any liability for unpaid taxes on behalf of taxpayers for whom Practitioner files returns.

Authority: [IC 6-2.5-9-3](#); [IC 6-3-4-8](#).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer is a third-party practitioner who electronically files withholding and sales tax returns on behalf of its clients. In particular, Taxpayer's concern relates to whether a third-party practitioner incurs liability for unpaid taxes if its client fails to remit taxes that are due to the Department. For the purposes of this Ruling, the method or means by which a return is filed, either electronically or in paper form, is of no consequence to the determination of liability on the part of a third-party practitioner.

DISCUSSION

Regarding adjusted gross income tax withholding amounts deducted or required to be deducted and remitted to the Department, [IC 6-3-4-8](#)(g) provides in pertinent part:

In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.

[IC 6-2.5-9-3](#) provides more clarification regarding taxes held in trust for the State:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in [IC 6-2.5-3-2](#)) to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

RULING

Liability for unpaid gross retail, use and/or adjusted gross income tax only extends to employees, officers, or other members of an entity that have a duty to deduct and remit such taxes. Third-party practitioners who merely file returns on behalf of clients do not incur liability with the Department for any unpaid taxes of their clients.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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