

DEPARTMENT OF STATE REVENUE

01-20100255.LOF
04-20100256.LOF**Letter of Findings: 10-0255, 10-0256
Sales/Use Tax and Personal Income Tax
For the 2006-2008 Tax Years**

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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. Tax Administration - Best information available.**

Authority: IC § 6-8.1-5-1; [45 IAC 3.1-1-2](#); [45 IAC 15-5-1](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of sales tax and income tax with respect to an increase in its sales receipts and adjustments to taxpayer's allowable deductions.

Taxpayer argues the Department of Revenue's assessment of sales—based upon an audit review of the "best information available"—overstated the taxpayer's sales figures for the years in question and that information taxpayer provided subsequent to the audit more accurately reflects the total amount of sales.

STATEMENT OF FACTS

Taxpayer operated an Indiana bar and restaurant as a sole proprietorship during the 2006, 2007, and 2008 tax years ("Tax Years"). Taxpayer registered with the Department of Revenue ("Department") for sales and withholding taxes. Taxpayer filed federal income tax returns, including profit or loss from business schedules (Schedule C) for the subject Tax Years. Taxpayer also filed Indiana income tax returns for the same Tax Years. The Department revoked taxpayer's retail merchant certificate in 2009 for failure to remit taxes.

The Department conducted an audit of taxpayer's business records and sales tax returns (the "Audit"), coupled with an investigation regarding taxpayer's income tax returns (the "Investigation"). Per the Department's request, taxpayer provided copies of daily sales recaps and printed paper tapes showing sales for the day (or shift) totals on the register(s), otherwise known as cash register Z tapes. The Department compared these documents to the sales reported by taxpayer on monthly ST-103 returns. The Department's review determined that very few of the recorded sales matched the reported sales. The Department also found taxpayer's Z tapes incomplete, with very few tapes showing an entire month of sales. Taxpayer did not provide any workpapers detailing taxpayer adjustments to the reported sales. Those adjustments included reductions to the total and taxable sales by alleged cash pay-outs from the cash register(s). As a result of the Department's Investigation, the Department determined that taxpayer's practice also necessarily reduced taxpayer's reported taxable income.

Taxpayer could not produce complete bank records, nor any evidence of ST-103 filings from September 2008 until the taxpayer's business closed in July 2009. These various document discrepancies, reporting inconsistencies, and questionable accounting practices led the Department to deem taxpayer's reported sales data unreliable. The Department, therefore, used an alternative audit method to calculate total and taxable sales.

The Department's Audit report resulted in the imposition of additional sales tax. The Department's Investigation report resulted in the imposition of additional income tax. Taxpayer submitted a protest, asserting that taxpayer's sales were lower than the figures the Department estimated. The Department granted taxpayer an administrative hearing. Taxpayer's representative submitted additional documents purporting to represent that representative's best estimate of taxpayer's total sales and income for the Tax Years. The hearing officer prepared this Letter of Findings based upon the information contained within the Department's Audit and Investigation reports, and upon the information taxpayer subsequently presented.

I. Tax Administration - Best information available.**DISCUSSION**

All tax assessments are prima facie evidence that the Department's claim for the 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).

Taxpayer disagreed with the Department auditor's findings that taxpayer's business had more sales income than taxpayer reported. During the hearing, taxpayer claimed that taxpayer had produced "everything that the auditor requested."

During the Audit and Investigation, the Department requested original sales records, invoices, expense reports, and recap tapes. Taxpayer provided some documents corresponding to each of the Tax Years, but could not produce complete records for any of those Years. Taxpayer also could not provide bank statements or withholding tax records, as requested. The audit progress report indicates that taxpayer caused numerous delays by failing to answer calls, failing to give necessary documentation, and failing to keep scheduled appointments or follow up telephone calls with the auditor.

Without more complete or reliable original records, the auditor proceeded to develop the Audit report based upon the "best information available." The auditor compared the taxpayer's alleged cost of goods sold to statistics published on BizStats.com for food and drinking establishments organized as sole proprietorships. That comparison showed significant disparity between the taxpayer's alleged average cost of goods sold and the BizStats.com statistics. The auditor used the BizStats.com data to arrive at a revised total audited sales figure.

The Audit report analysis and revised sales figures contributed to the auditor's re-evaluation, analysis, and calculation of taxpayer's gross income for the Tax Years. [45 IAC 3.1-1-2](#) requires Indiana residents to report all income as defined by Section 61 of the Internal Revenue Code, including but not limited to gross income derived from business and wages or commissions. With revised cost of goods sold amounts, the auditor made several adjustments necessary in order to fairly reflect the taxpayer's income and deductions attributed to taxpayer's business activity. Those adjustments included changes to taxpayer's federal Schedule C statements for the Tax Years, which enabled the Department to determine taxpayer's federal adjusted gross income. The Investigation report reflects that revised federal adjusted gross income calculation as the starting point for Indiana adjusted gross income.

The Department prepared the sales and income tax assessments based upon authority contained within IC § 6-8.1-5-1(b) which states that "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." See also [45 IAC 15-5-1](#) (permitting the Department access to private sources in performing the Department's functions).

During the hearing, taxpayer's representative presented amended Indiana income tax returns to provide revised schedules of costs of goods sold and other alleged business-related expenses. While the revised returns attempted to close the gap between taxpayer's reported income and sales figures and those determined by the Department's Audit and Investigation reports, neither the taxpayer nor taxpayer's representative provided any additional documentation to support either these revised Indiana returns or taxpayer's position regarding taxpayer's underreporting.

The taxpayer has the obligation to prepare a careful, methodical, and detailed factual presentation of the evidence sufficient to refute the conclusions contained within the Audit and Investigation reports. In order to meet its burden, the taxpayer must "walk" the Hearing Officer through each element of the taxpayer's proffered evidence; taxpayer does not meet its burden by presenting amended returns, without invoices, receipts, daily recaps, or other supporting documentation. Amended returns, without more, only serve as conclusory statements in the hope that those returns or statements will speak for themselves.

The taxpayer's amended returns and additional explanation proffered during the hearing do not sufficiently refute the information or the results reached in the Department's Audit and Investigation reports.

FINDING

Taxpayer's protest is respectfully denied.

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