

Letter of Findings: 04-20110388
Gross Retail Tax
For the Years 2007, 2008, and 2009

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ISSUE

I. Sales Tax Adjustment – Gross Retail.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-3-2(a); IC § 6-2.5-4-1(b), (c); IC § 6-8.1-5-1(a); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a).

Taxpayer argues that the Indiana Department of Revenue's assessment of additional sales/use tax was overstated because its bank account contained amounts received from both its business and from non-business activities.

STATEMENT OF FACTS

Taxpayer is an Indiana business which sells used household appliances such as washers, dryers, refrigerators, ranges, and freezers. Taxpayer also sells satellite television services. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records. The audit resulted in the assessment of additional sales tax. Taxpayer disagreed with the additional assessment in its entirety and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results.

I. Sales Tax Adjustment – Gross Retail.

DISCUSSION

The Department's audit found that Taxpayer purportedly failed to record cash sales and remit tax on those sales to the Department. The audit came to that conclusion because the amount of income deposited into the business bank account did not correspond to the amount of taxable sales.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Under Indiana law, a retail merchant is required to collect and remit sales tax on all retail transactions. The retail merchant is required to collect that tax as an agent for the state of Indiana. Id. A taxable retail transaction occurs when; (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b), (c); IC § 6-2.5-3-2(a).

As a business conducting retail transactions and collecting sales tax, Taxpayer was required to maintain accurate financial records. 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). 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).

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(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."

Taxpayer apparently recognizes its responsibility to collect and remit sales tax but objects to the determination that Taxpayer owed additional sales tax because the Department based the additional assessment on a misinterpretation of its bank statements. Taxpayer explains that the owner's husband "deposited his gambling winnings into the bank account that [owner] used for her business...." Taxpayer further explains as follows:

It is the position of the [T]axpayer that the Unreported Gross Retail income as determined by the State of Indiana by a review of all bank statements is actually gambling winnings and should be reported as such. [Owner] kept excellent business records [and] maintains the amount of sales reported on her Sales Tax Returns is correct.

Taxpayer supplied copies of various statements received from an Indiana casino. The statements establish that owner's husband apparently won and lost money at this casino. However, the amounts won do not correspond to the amounts deposited into the business account. For example – and for illustrative purposes only – assume husband won \$100 on June 1, 2008. There is nothing in the bank records which show that \$100 was deposited into the business account on or near June 1. Taxpayer explains the apparent discrepancy by stating

that husband would only deposit a portion of the gambling winnings into the account. In the example cited above, husband might have deposited \$10, \$20, \$50, or \$35 into the business account. Taxpayer has no record of the amount of gambling money that was actually deposited into the business account.

Taxpayer asks the Department to accept its assertion that the total amounts of money in the business account contained undifferentiated amounts of business income and gambling winnings and that the amount of taxes was properly calculated as originally determined. Taxpayer asks too much.

As noted above, it is Taxpayer's responsibility to keep books and records sufficient to establish the Taxpayer's liability; Taxpayer failed to do so because the practice of keeping gambling winnings and business income in the same bank account, with no means of differentiating those amounts, would appear to be an unsound business practice. The audit fulfilled its responsibility to determine the additional liability based upon the "best" information available, but Taxpayer has failed meet its responsibility for establishing that the proposed assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied.

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