DEPARTMENT OF STATE REVENUE

10-20110599.LOF

Letter of Findings Number: 10-20110599
County Food and Beverage Tax
For Tax Year 2010

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ISSUE

I. County Food and Beverage Tax–Application.

Authority: IC § 6-9-35-1; IC § 6-9-35-5; IC § 6-9-35-11; IC § 6-8.1-5-1.

Taxpayer protests the imposition of county food and beverage tax.

STATEMENT OF FACTS

Taxpayer is an Indiana business operating as a restaurant and bar. The Indiana Department of Revenue ("Department") determined that Taxpayer had not collected or remitted the county food and beverage tax ("CFBT") for its county during the tax year 2010. The Department therefore issued proposed assessments for CFBT for 2010. Taxpayer protests the imposition of CFBT. An administrative hearing was scheduled, but no one showed up or called to represent Taxpayer. This Letter of Findings is therefore based on the materials provided with the protest letter. Further facts will be supplied as required.

I. County Food and Beverage Tax–Application.

Taxpayer protests the imposition of CFBT on the grounds that the Department never sent it monthly vouchers for the tax. Taxpayer believes that this relieved it of the responsibility to collect and remit the CFBT. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The first relevant statute is IC § 6-9-35-1, which states:

> This chapter applies to Boone, Johnson, Hamilton, Hancock, Hendricks, Morgan, and Shelby counties (referred to as counties in this chapter) and to the cities or towns of Carmel, Fishers, Greenfield, Lebanon, Noblesville, Westfield, and Zionsville that are located in those counties (referred to as municipalities in this chapter).

Next, IC § 6-9-35-5 states:

> (a) Except as provided in subsection (d), the fiscal body of a county may adopt an ordinance not later than June 30, 2005, to impose an excise tax, known as the food and beverage tax, on those transactions described in sections 8 and 9 of this chapter that occur anywhere within the county.
>
> (b) Except as provided in subsection (d), if the county in which the municipality is located has adopted an ordinance imposing an excise tax under subsection (a), the fiscal body of a municipality may adopt an ordinance not later than September 30, 2005, to impose an excise tax, known as the food and beverage tax, on those transactions described in sections 8 and 9 of this chapter that occur anywhere within the municipality.

Finally, IC § 6-9-35-11 states:

> The county fiscal body may adopt an ordinance requiring that any tax imposed under this chapter be reported on forms approved by the county treasurer and that the tax be paid monthly to the county treasurer. If such an ordinance is adopted, the tax shall be paid to the county treasurer not more than twenty (20) days after the end of the month the tax is collected, and the county treasurer is responsible for collecting the tax and enforcing any of the provisions of IC 6-2.5 with respect to the tax. If such an ordinance is not adopted, the tax shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the taxes may be made on separate returns or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

(Emphasis added).

Therefore, the CFBT may be filed with a separate return or may be combined with the return filed for the payment of the state gross retail tax. Since Taxpayer did file returns for the state gross retail tax, the CFBT could have been included with those returns. Taxpayer did not do so. Taxpayer has not referred to any statute or regulation which states that lack of CFBT vouchers relieves it of the duty to collect and remit the CFBT. Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

Posted: 05/30/2012 by Legislative Services Agency

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