

**Letter of Findings: 01-20120569  
Individual Income Tax  
For the Years 2009 and 2010**

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**ISSUE**

**I. Estimated Tax Liability – Individual Income Tax.**

**Authority:** IC § 6-8.1-5-1(b); IC § 6-8.1-5-4; IC § 6-8.1-5-4(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that he is entitled to a review of the supplemental documentation belatedly provided to the Department of Revenue following an audit of Taxpayer's businesses.

**STATEMENT OF FACTS**

Taxpayer filed an individual 2010 state and federal income tax return. Taxpayer did not file a 2009 state income tax return. The Department of Revenue ("Department") conducted an audit review of Taxpayer's business and found that he had underreported his individual income attributable to his businesses. The Department assessed individual income tax. Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

**I. Estimated Tax Liability – Individual Income Tax.**

**DISCUSSION**

Taxpayer operated taverns at three different locations. The Department's audit found that Taxpayer had failed to maintain records sufficient to determine Taxpayer's various tax liabilities. Additionally, the audit found that Taxpayer had operated its businesses more than three days each week and – contrary to Taxpayer's earlier representation – did have employees working at the tavern locations. Taxpayer protested the assessment of additional sales, withholding, and food and beverage tax. That protest is addressed in a separate Letter of Findings.

Besides the assessment of additional business tax, the audit also found that Taxpayer owed additional Indiana individual income tax. As stated in the audit report, "[D]ue to a lack of cooperation by the [T]axpayer and the failure to provide records, estimates are being made based on average sales from the 2007 Census Bureau at factfinder.census.gov."

Indiana law provides 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 to the department." IC § 6-8.1-5-1(b). Even a cursory review of the audit's report reveals that the original records provided by Taxpayer were insufficient and that the Department was fully justified in making the income tax assessment it did.

It should be pointed out that, "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. In addition, IC § 6-8.1-5-4(c) provides that, "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).

Taxpayer maintains that the business assessment overstated his individual income. During the business tax protest, Taxpayer belatedly provided documentation which it asserted would result in a decrease in the amount of business tax owed. Although the Letter of Findings made no determination as to the amount of business tax owed, the Department agreed to review the supplemental documentation and to adjust the business tax assessments as warranted.

As with the business tax liabilities, it is Taxpayer's responsibility to establish that the existing individual income 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." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The disputed income tax stems directly from Taxpayer's failure and inability to maintain or supply the necessary records during the initial audit. Taxpayer has failed to meet its burden under IC § 6-8.1-5-1(c) of demonstrating that the original tax assessment is "wrong." Nonetheless, The Department's Audit Division is requested to review the supplemental information and to make whatever adjustment to the individual income tax assessment as it deems warranted.

**FINDING**

Taxpayer's protest is sustained subject to audit review.

*Posted: 05/29/2013 by Legislative Services Agency*

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