

Letter of Findings: 04-20130060
Gross Retail tax
For the Years 2009, 2010, and 2011

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ISSUE

I. Gasoline Sales – Gross Retail Tax.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-9-3; IC § 6-8.1-5-1(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 the Department of Revenue's audit over-stated the amount of sales tax owed on its sales of gasoline.

STATEMENT OF FACTS

Taxpayer is an Indiana business which operates a combination gasoline station and convenience store. The gasoline station sells gasoline from two pumps. The convenience stores sells, tobacco products, soft drinks, food items, and the like.

The Department of Revenue ("Department") conducted an audit review of Taxpayer's books and records. The audit began May 2012 and concluded October 2012.

The audit resulted in the assessment of additional sales and use tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Gasoline Sales – Gross Retail Tax.

DISCUSSION

The Department's audit concluded that Taxpayer "under reported gasoline sales." As stated in the audit report, "The gallons sold reported on ST-103MP were subtracted from the purchased gallons. The under-reported metered pump sales were found when the average pump price was multiplying the difference between purchased and sold."

Taxpayer does not dispute the additional sales tax assessed for the years 2010 and 2011. Taxpayer does claim that it can belatedly provide documentation which establishes that it purchased less fuel during 2009 than the amount determined by the Department's audit.

As a threshold issue, it is the 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." 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).

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 retail merchant – such as Taxpayer – is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes...." IC § 6-2.5-9-3.

Taxpayer complains that it was denied sufficient time in which to produce the requested documentation. Whether or not the Department agrees that six months was sufficient time in which to obtain the records is ultimately beside the point. What is relevant is that Taxpayer has now provided records from its gasoline vendor which purportedly demonstrate that Taxpayer purchased less gasoline during 2009 than that determined by the audit.

Taxpayer has not met its burden under IC § 6-8.1-5-1(c) of demonstrating that the 2009 assessment was wrong. However, the audit division is requested to review the vendor invoices and to make whatever adjustment to the 2009 sales tax assessment as may be warranted.

FINDING

To the extent that the Audit Division finds that the 2009 sales tax assessment should be adjusted, Taxpayer's protest is sustained.

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