

**Letter of Findings Number: 01-20120526  
Individual Income Tax and Sales Tax  
For the Years 2009 and 2010**

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**ISSUE**

**I. Individual Income Tax and Sales Tax – Imposition.**

**Authority:** IC § 6-8.1-5-1.

Taxpayer protests the imposition of Indiana individual income tax.

**STATEMENT OF FACTS**

Taxpayer is an individual. Taxpayer operated a sole proprietorship with multiple Indiana locations. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer underreported his sales from the business. The Department assessed additional Indiana sales tax and Indiana individual income tax based on the underreported receipts. Taxpayer protested the assessments. The Department conducted an administrative hearing and this Letter of Findings results. Additional facts will be supplied as necessary.

**I. Individual Income Tax and Sales Tax – Imposition.**

**DISCUSSION**

Taxpayer protests the imposition of individual income tax and sales tax for 2009 and 2010. In particular, Taxpayer asserts that the Department overstated his receipts from the sale of tangible personal property for the years in question. The issue is whether the Department's audit overstated Taxpayer's receipts.

IC § 6-8.1-5-1 states in relevant part "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."

The Department's audit adjusted Taxpayer's receipts from the sale of tangible personal property. First, the Department determined Taxpayer's cost of goods sold—the price at which Taxpayer purchased the property. Second, the Department multiplied the cost of goods sold by two to determine the amount of total sales. Third, the Department subtracted the receipts from wholesale sales from the total sales to determine the taxable sales for sales tax purposes.

Taxpayer asserts that the audit overstated the amount of sales by imputing the same markup to property ultimately sold as wholesale sales as to the property sold at retail. Taxpayer argues that the more accurate method is to break out wholesale sales and the cost of property sold as part of the wholesale sales, then determine the amount of retail sales separately.

Taxpayer provided invoices with regard to its purchase orders and with regard to the wholesale sales made by Taxpayer to third parties. Taxpayer has provided sufficient information to conclude that its wholesale sales were sold at a lower profit margin than the Department's audit stated. Accordingly, Taxpayer's protest is sustained with regard to its contention regarding wholesale sales of all-terrain vehicles (ATV) and fireworks. However, it is important to note that Taxpayer provided the actual invoices and traced the cost of goods sold from the purchase of the item to the wholesale sale of the same item. Upon supplemental audit, the multiplier used in the Department's audit for all sales shall be applied to the portion of cost of goods sold at retail (i.e., total cost of goods sold minus wholesale cost of goods sold) to determine the revised retail sales for ATV and firework sales.

**FINDING**

Taxpayer's protest is sustained to the extent stated above.

*Posted: 09/25/2013 by Legislative Services Agency*

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