

**Letter of Findings: 04-20120488P
Tax Administration
For the Tax Years 2011 and 2012**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty and Interest.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-6-1; IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Taxpayer protests the imposition of penalties and interest for the late filing of sales taxes.

STATEMENT OF FACTS

Taxpayer is an Indiana company. Taxpayer did not timely remit sales tax that it collected from its customers to the Indiana Department of Revenue ("Department"). As a result, the Department assessed a ten percent penalty for the late remittance. Taxpayer filed a protest. A telephone hearing was held; this Letter of Findings results. More facts will be provided below as needed.

I. Tax Administration – Penalty and Interest.

DISCUSSION

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. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (Emphasis added).

Additionally, the Department notes that IC § 6-2.5-6-1 governs the filing requirements for the collection and remittance of sales tax. Regarding penalties and interest, the former is governed by IC § 6-8.1-10-2.1, and the latter by IC § 6-8.1-10-1.

During the period of July 2012 through October 2012, Taxpayer wrote several letters to the Department. In order to understand what, exactly, is being protested by Taxpayer, it will be necessary to examine the various letters. In its protest, Taxpayer provided the Department with a letter dated July 2, 2012. That letter, from Taxpayer to the Department, states in pertinent part:

On numerous occasions we have requested new coupons for our quarterly Sales Tax payments. For whatever reason you [i.e., Department] have either miss-placed [sic] or ignored our requests. We do admit at one point we did get slow on our sales tax liabilities and therefore will be paying the late penalties and interest for notice numbers 12037790137 amount \$189.35, 12037790138 amount \$116.50, 12037790139 amount \$122.30 and 12037790140 amount \$123.97 or a total of \$552.12. As a small business we did run into some collection issues on our receivables and therefore ran a little slow on our payables.

Taxpayer's July 2, 2012, letter further states:

With all the above being said we are disputing the following notices, 12037790141 amount \$128.88, 12037790142 amount \$126.63, 12037790143 amount \$127.09, 12037790144 amount \$67.49 and 12037790145 amount \$75.85. We are enclosing copies of the disputed notices as well as copies of our cancelled checks. Since we have never received payment coupons with a due date other than we have always paid quarterly after numerous requests we do not feel we owe any additional penalties and interest on any items paid either quarterly or earlier. (Emphasis added).

The copies of the proposed assessments for these notice numbers are for Sales Tax, for the liability periods September 30, 2011; October 31, 2011; November 30, 2011; January 31, 2012; and March 31, 2012. On July 3, 2012, Taxpayer sent another letter to the Department, stating that Taxpayer had overpaid sales tax in the amount of over \$3,000.00.

Taxpayer also provided the Department with copies of letters that it sent the Department on August 6, 2012, and August 8, 2012. In the letter dated August 8, 2012, Taxpayer disputes "Liability Notice 2012-03744401 notice number 12038161066 dated 08/04/12 saying we owe late charges on sales tax for period ending 05/31/12."

Indiana Register

Taxpayer states that it has been "paying our sales taxes quarterly and then moved to bi-monthly on our own earlier this year." Taxpayer has also sent additional letters to the Department, including letters in September and October of 2012. From Taxpayer's July 2, 2012, letter, and its August 8, 2012, letter, the penalties and interest associated with the following liabilities are at issue:

- 2011-03583355;
- 2011-03583356;
- 2011-03583357;
- 2012-03583358;
- 2012-03583359; and
- 2012-03744401.

Among the items provided by Taxpayer with its protest, were two letters from the Department. A Department letter that is dated August 24, 2012, states:

We regret to inform you that the Department of Revenue cannot meet your request for abatement of penalty and interest assessed on a late-filed return. We have found no reasonable cause to allow for this abatement. Indiana state code, [IC 6-8.1-10-2.1\(d\)](#), requires a person to show that failure to remit taxes in a timely manner is due to reasonable cause and not willful neglect. Reasonable cause was not demonstrated in this case and, as a result, your request has been denied.

Another letter from the Department, dated August 28, 2012, reiterated similar language regarding the abatement of penalty and interest "on a late-filed return."

In September of 2012, Taxpayer sent another letter, stating once again in relevant part:

We have been disputing all of the attached tax liability notices since July 2, 2012 We again appeal the decision that we paid late and interest and penalties are due. We for years were paying quarterly and for over a year we requested new payment coupons which were never received until sometime after our first dispute on July 2, 2012 telling us we needed to pay monthly.

Taxpayer also states that it believes that it has had an "overpayment of Sales Tax since 2004," and that Taxpayer "guesse[s]" that Taxpayer initially thought it had over paid "around \$3,000.00" but that Taxpayer has checked its "accounting system" and that Taxpayer believes its purported overpayment to be "approximately \$6,845.18 since May of 2004." Taxpayer then goes on to say, "we do feel we have over paid somewhere between \$3,000.00 and \$6,000.00 figures." Regarding the purported overpayment, the Department notes that Taxpayer would need to file a timely Claim for Refund (form GA 110L) regarding any alleged overpayments. The Claim for Refund issue is not before the Department's Legal Division, thus it is not further addressed in this Letter of Findings.

The issue before the Department in this Letter of Findings is the late payment penalties and interest for the six liability numbers listed supra. Taxpayer's argument turns on the coupon issue. Taxpayer at the hearing stated that the company was formed in 2004, and that it had been remitting sales tax to the Department quarterly. Taxpayer states that it did not know when the Department switched it from quarterly to monthly for sales tax remittance. Taxpayer states that it contacted the Department in late 2010 about getting the proper monthly coupons. Taxpayer says it did not timely receive the coupons, so Taxpayer continued to use the old coupons.

The Department's records indicate that Taxpayer's sales tax filing deadline with the Department has been monthly, not quarterly, since 2004. (The Department, in response to Taxpayer's inquiries, sent Taxpayer letters in 2012 outlining the requirements for sales tax filing frequency). Also, the Department mailed Taxpayer a letter (printed on July 31, 2010) revoking Taxpayer's Retail Merchant Certificate ("RRMC"). That letter stated:

Your Registered Retail Merchant Certificate has been revoked for all business locations listed under the taxpayer identification number shown at the top of this letter. All business activities must end effective 08/04/2010, at all locations listed on page 2 of this letter ([IC 6-2.5-8-1](#)). (**Emphasis** in the original).

Thus the likely reason Taxpayer may not have had the coupons, for the period after August 4, 2010, was because Taxpayer's RRMC had been revoked (i.e., Taxpayer was not supposed to be doing business after that August date).

Regarding the six liability numbers addressed in this Letter of Findings, the Department's records show Taxpayer was late in making its sales tax remittances. Taxpayer, who bears the burden of proof under IC § 6-8.1-5-1(c), has failed to establish that it was a quarterly sales tax filer for the period at issue (in fact, the Department's records indicate that Taxpayer has been a monthly sales tax filer since 2004). The Department also notes that the reason Taxpayer may not have had payment coupons for a period of time was likely because Taxpayer's RRMC had been revoked. And finally, according to the Department's records, the six liabilities at issue were late. Thus the Department finds that Taxpayer has failed to establish reasonable cause under IC § 6-8.1-10-2.1(d). Regarding any interest owed, the Department may not waive interest, per IC § 6-8.1-10-1(e).

FINDING

Taxpayer's protest is denied.

Posted: 09/25/2013 by Legislative Services Agency

