

**Letter of Findings: 04-20130475**  
**Gross Retail Tax**  
**For the Years 2008, 2009, 2010, and 2011**

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**ISSUE**

**I. Gross Retail Tax – Availability of Records.**

**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\(b\)](#); [IC 6-8.1-5-1\(c\)](#); [IC 6-8.1-5-4\(a\)](#); 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); [45 IAC 15-5-1](#).

Taxpayer argues that the Department of Revenue's audit overstated the amount of gross retail tax owed.

**STATEMENT OF FACTS**

Taxpayer is the sole proprietor of an Indiana business. The business consists of a combination gas station and convenience store. The store sells such items as food, candy, soda, newspapers, lottery tickets, tobacco products, and the like.

The Indiana Department of Revenue ("Department") conducted an audit review of the Taxpayer's business records and tax returns.

The nine-month audit was initiated August 2012 and was eventually concluded April 2013.

The audit found that "[T]axpayer collected Indiana sales tax during the audit; however the [T]axpayer only reported and remitted a portion of the tax."

The audit resulted in the assessment of additional tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled in order to permit Taxpayer the opportunity to explain the basis for the protest and to supply additional information. This Letter of Findings results.

**I. Gross Retail Tax – Availability of Records.**

**DISCUSSION**

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 [D]epartment'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](#).

The audit found that Taxpayer failed to maintain sales records. The audit also found that Taxpayer failed to file all the requisite tax returns.

In the absence of returns and source documentation, the audit made a determination of the tax due based on the "best information available."

As a business conducting retail transactions and collecting sales tax, Taxpayer was required to maintain accurate financial records. "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\(a\)](#). "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 [D]epartment." [IC 6-8.1-5-1\(b\)](#). See also [45 IAC 15-5-1](#).

The audit based its "best information available" assessment – in part – on Taxpayer's incomplete documentation, the amount of fuel acquired from Taxpayer's fuel supplier, "average merchandise sales," and an approximation of the ratio of exempt retail sales and non-exempt retail sales.

Taxpayer argues that the gas station/convenience store is now closed, that the bank has possession of the building, that she did not have access to a phone or computer during the audit period, and that "the final audit was never explained to me so that I could understand what all was entailed."

Taxpayer was provided an opportunity to provide supplemental information at the administrative hearing and further explain the basis for the protest during that same hearing. However, despite being advised of the administrative hearing by both email and regular mail, Taxpayer chose not to participate.

Taxpayer has not demonstrated that the audit was erroneous and has failed to meet the burden under [IC 6-8.1-5-1\(c\)](#) of establishing that the assessment was wrong.

**FINDING**

Taxpayer's protest is respectfully denied.

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