

Letter of Findings Number: 04-20130392
Sales Tax
For Tax Years 2010-12

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Sales Tax—Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-1.

Taxpayer protests the assessment of sales tax on certain sales.

STATEMENT OF FACTS

Taxpayer is an out-of-state business with operations in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected and remitted the proper amount of sales tax for the tax years 2010, 2011, and 2012. The Department therefore issued proposed assessments for sales tax and interest for those years. Taxpayer protests a portion of the proposed assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax—Imposition.

DISCUSSION

Taxpayer protests a portion of the Department's proposed assessments of sales tax for the tax years 2010-12. The Department conducted an audit and, due to the large number of transactions at issue, used a sample and projection procedure to determine Taxpayer's sales tax compliance rate for the tax years at issue. Once that rate was determined, the Department applied it to Taxpayer's total sales for those years and gave credit for the amount of sales tax which was already remitted by Taxpayer. This resulted in the bulk of the proposed assessments being imposed for 2010, with much smaller amounts imposed for 2011 and 2012. Taxpayer states that the errors which gave rise to the overall compliance rate calculations were recognized and corrected in 2010. This, Taxpayer explains, is why the majority of the proposed assessments are found in 2010 and not in 2011 and 2012. Taxpayer therefore requests that the proposed assessments for 2011 and 2012 be waived since the underlying compliance problems were already addressed in 2010. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which 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).

In this case, the Department determined that Taxpayer, acting as a retail merchant, failed to collect the sales tax on certain transactions during the tax years at issue. Taxpayer protests that by using the sample and projection method, the Department arrived at assessments for 2011 and 2012 when there were not actual deficiencies for those years. Taxpayer also notes that this was its first audit and that it did not act with willful neglect or disregard for its duties under Indiana tax laws.

The Department notes that Taxpayer's reference to willful neglect or disregard for its tax duties is not relevant to the imposition of base sales tax. Rather, Taxpayer's reference to willful neglect or disregard for its tax duties would be relevant if Taxpayer were protesting the imposition of a ten percent negligence penalty. In this case, the Department did not impose a penalty.

Also, the Department's use of a sample and projection method to arrive at a compliance rate pulled the sample population of invoices from all three years under audit. Therefore, the Department is satisfied that it was a representative sample for the entire audit period. In fact, the inclusion of invoices from 2011 and 2012, which were the years after Taxpayer improved its sales tax compliance methods, resulted in a higher compliance rate which was then applied to all three years. This resulted in a higher compliance rate being applied to 2010, which was Taxpayer's least compliant year. The Department is satisfied that the sample and projection methodology was correctly applied. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

Posted: 04/30/2014 by Legislative Services Agency

