

**Supplemental Letter of Findings: 04-20130367**  
**Sales and Use Tax**  
**For the Years 2010 and 2011**

**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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUE**

**I. Sales & Use Tax – Imposition – Burden of Proof.**

**Authority:** IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Letter of Findings 04-20130367 (December 3, 2013).

Taxpayer protests the assessment of sales tax on sales of cubed ice and drinking water.

**STATEMENT OF FACTS**

Taxpayer is an Indiana company, which sells cubed ice and drinking water from automated vending machines ("Vending Machines"). The Vending Machines, which use the water purchased from the local water utility, manufacture and dispense cubed ice and drinking water for sale. Customers can purchase cubed ice or drinking water by inserting cash into money acceptors located at the front of the Vending Machines.

In late 2012, the Indiana Department of Revenue ("Department") audited Taxpayer's business records for the tax years 2010 and 2011. Pursuant to the audit, the Department determined that Taxpayer failed to remit the proper amount of sales tax on its sales of the cubed ice and drinking water. The Department's audit also determined that Taxpayer purchased certain tangible personal property to be used in the course of its business without paying sales tax or self-assessing use tax. As a result, the Department assessed additional sales tax, use tax, penalty, and interest.

Taxpayer protested the assessments. A phone hearing was held. The Department issued Letter of Findings 04-20130367 (December 3, 2013), 20140226 Ind. Reg. 045140044NRA ("LOF"), which sustained Taxpayer's protest, in part, and denied it, in part. Taxpayer subsequently submitted additional documentation, requesting a rehearing on two (2) issues: (1) sales tax on additional sales of cubed ice and drinking water; and (2) use tax on various purchases of tangible personal property. A rehearing was conducted. At the rehearing, Taxpayer withdrew its protest on the issue of use tax on various purchases of tangible personal property but continues to protest the remainder. This Supplemental Letter of Findings ensues and addresses Taxpayer's protest of sales tax on additional sales of cubed ice and drinking water. Additional facts will be provided as necessary.

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**DISCUSSION**

The Department's audit imposed additional sales tax based on the best information available at the time of the audit. After an administrative phone hearing, the LOF concluded that Taxpayer is responsible for the additional sales tax because Taxpayer did not provide sufficient documentation to demonstrate the proposed assessment is wrong.

Taxpayer disagreed and requested for a rehearing. Taxpayer further submitted additional documentation to support its protest.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State 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).

At the rehearing, Taxpayer reiterated that the audit assessment was incorrect. Taxpayer, referencing its additional supporting documentation, maintained that it has properly reported sales tax. Upon reviewing Taxpayer's additional documentation, the Department agrees that Taxpayer has provided sufficient documentation to demonstrate that it properly reported sales tax for the tax years at issue. Thus, the audit assessment on additional sales of cubed ice and drinking water is not correct.

In short, Taxpayer's protest of the imposition of sales tax is sustained. The Department will recalculate Taxpayer's tax liability in a supplemental audit review.

**FINDING**

Taxpayer's protest of imposition of sales tax is sustained. The Department will recalculate Taxpayer's tax liability in a supplemental audit review.

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