

DEPARTMENT OF STATE REVENUE

04-20140280.LOF

Letter of Findings Number: 04-20140280
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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: Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); IC § 6-2.5-2-1; IC § 6-8.1-5-1.

Taxpayer protests the imposition of sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana retail merchant. 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, negligence penalty, and interest. Taxpayer protested the Department's 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 the proposed assessments for sales tax for the years 2010, 2011, and 2012. The Department based its determination that Taxpayer had not collected and remitted the proper amount of sales tax for those years on the lack of documentation supporting Taxpayer's sales tax returns as reported. The Department used the best information available to determine the amount of sales tax which should have been collected and remitted by Taxpayer for the tax years at issue. Taxpayer protests that the Department did not give credence to what documentation was available and that its determination of sales tax due was inaccurate. 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.

Also, the Department refers to IC § 6-8.1-5-1(b), which states:

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 department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail. (Emphasis added).

In its protest letter and in the administrative hearing, Taxpayer stated that it did not believe that the Department gave proper credence to the documentation which Taxpayer provided during the audit. Taxpayer did not provide any new documentation or additional analysis of the previously provided documentation.

As explained during the hearing and in the Department's letter setting the hearing, the protest process is a taxpayer's opportunity to clearly explain their protest and to provide relevant and cogent supporting documentation. Taxpayer has not presented a sufficiently developed argument for the Department to address. See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 fn.9 (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)). Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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