

**Letter of Findings Number: 04-20140137**  
**Sales/Use 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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; IC § 6-8.1-5-4; *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the imposition of sales tax.

**STATEMENT OF FACTS**

Taxpayer is a gasoline and convenience store merchant. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the years 2010 through 2012. The audit resulted in the proposed assessment of sales tax, penalty, and interest for the years at issue. Taxpayer protested the proposed assessments. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

**I. Sales Tax—Imposition.**

**DISCUSSION**

Taxpayer protests the proposed assessment of sales tax for the tax years 2010, 2011, and 2012. From Taxpayer's protest letter, it is unclear whether or not Taxpayer is also protesting the penalty and interest assessed (Taxpayer's protest letter states, "Taxpayer hereby protests the above tax liabilities . . ."). Due to the lack of Taxpayer's records, the Department assessed Taxpayer sales tax on a best information available ("BIA") basis. Taxpayer believes that the Department's BIA method does not properly reflect the Taxpayer's actual tax liability. 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 under 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.

IC § 6-8.1-5-1(b) explains the Department's use of BIA:

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.

The Audit Report states that the Department requested documents from Taxpayer:

Specifically, requested were the federal and state income tax returns, general ledgers, trial balances, chart of accounts, sales and purchase invoices, sales tax returns (Form ST- 103MP), payroll journals, W-2 statements as well as all work papers necessary to aid in determining the tax liability for the taxpayer. A certified letter was mailed to the taxpayer on June 11, 2013 after several failed attempts to contact the

taxpayer by phone to schedule a date for the audit.

Taxpayer, per the Audit Report, "provided some of its fuel purchase invoices, manual sales summary reports . . . Indiana Hoosier Lottery Reports, W-2 statements, and copies of unfiled Indiana Metered Pump Sales and Use Tax Returns (Form ST-103MP)." The Audit Report states that "the ST-103MP returns clearly show sales tax due, the taxpayer did not remit any tax to the Indiana Department of Revenue."

The auditor e-mailed Taxpayer and Taxpayer's Power of Attorney "stipulating that all records that the audit is to consider must be provided" by a specific date in October 2013. The Audit Report states:

The only additional information provided by the taxpayer was yearly close out reports for the calendar years 2010, 2011, and 2012. These reports contained large numbers of unsupported voided transactions. The taxpayer indicated that the daily register Z-tapes for the two (2) cash registers in the store and the monthly POS reports had not been retained.

Pursuant to IC § 6-2.5-2-1 Taxpayer is subject to sales tax requirements. Regarding the Department's BIA methodology, IC § 6-8.1-5-1(b) 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.

Additionally, IC § 6-8.1-5-4(a) states:

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. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

The Audit Report notes that "[s]ince the taxpayer did not provide complete books and records for inspection or examination, an alternative method to determine the tax liability was necessary." In other words, Taxpayer did not comply with IC § 6-8.1-5-4(a). Taxpayer's failure to maintain books and records under IC § 6-8.1-5-4(a) led to the Department's BIA methodology under IC § 6-8.1-5-1(b).

Taxpayer protests the Department's BIA methodology, but Taxpayer did not provide any new documentation or additional analysis of the previously provided documentation. Taxpayer instead makes broad assertions (e.g., "Auditor changed the exempt percentage claimed to 5[percent] by fiat."). As explained 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 n.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) (quoting *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). Taxpayer also failed to develop any argument regarding the penalty and interest assessments, and thus Taxpayer is denied regarding those issues too.

## FINDING

Taxpayer's protest is denied.

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