

Letter of Findings Number: 04-20140273
Sales and Use Tax
For Tax Years 2010, 2011, and 2012

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-6; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Rhoades v. Indiana Dept. of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Indiana Dept. of State Revenue v. AOL, 963 N.E.2d 498 (Ind. 2012); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of additional sales and use taxes.

STATEMENT OF FACTS

Taxpayer operates a gas station and convenience store. The Indiana Department of Revenue ("Department") conducted an audit and issued proposed assessments of additional sales and use tax plus penalty and interest. The outcome of the sales and use tax audit resulted in the adjustment of Taxpayer's reported income, so the Department also proposed assessments of additional adjusted gross income tax plus penalty and interest. Taxpayer protests the proposed assessments of base income, sales, and use taxes. An administrative hearing was held. This Letter of Findings addresses Taxpayer's protest of the proposed assessments of additional sales and use taxes. Letter of Findings 02-20140271 addresses Taxpayer's protest of the proposed assessment of additional income tax. Additional facts will be supplied as necessary.

I. Sales and Use Tax - Liability.

DISCUSSION

Taxpayer protests the imposition of additional sales and use tax. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue is whether Taxpayer met its burden to prove the assessment is incorrect.

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). Indiana imposes a complementary use tax on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction" regardless of the merchant's or transaction's location. IC § 6-2.5-3-2(a); [45 IAC 2.2-3-4](#). The use tax is "functionally equivalent to [the] sales tax." Rhoades v. Indiana Dept. of State Revenue, 774 N.E.2d 1044, 1047-48 (Ind. Tax Ct. 2002). "Indeed, the purpose of the use tax is merely to prevent evasion of the sales tax." Indiana Dept. of State Revenue v. AOL, 963 N.E.2d 498, 501 (Ind. 2012). The person who uses, stores, or consumes property acquired in a retail transaction in Indiana is responsible for payment of use tax on the transaction. IC § 6-2.5-3-6(b).

"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). Such records include "all source documents necessary to determine the tax" *Id.* If the Department cannot determine a taxpayer's liability and the Department reasonably believes that the taxpayer has not reported the proper amount of tax due, the Department will propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b).

Taxpayer does not dispute that it is subject to sales and use taxes, two listed taxes. Pursuant to IC § 6-8.1-5-4(a), it must keep sufficient records for the Department to be able to determine the amount of Taxpayer's tax liability. According to the audit report, Taxpayer provided a "monthly sales summary by category," but "failed to provide

any source documents for sales" In fact, "no cash register tapes were provided" and "purchase invoices for many vendors were not provided." Because the books and records provided were insufficient, the auditor used the best information available to verify whether sales were reported and to propose assessments of unpaid tax.

Taxpayer states that the auditor "ignored original records provided by taxpayer including annual Z-tape summary which supported sales tax returns filed by taxpayer and bank statements." The audit report does not mention an annual Z-tape summary or bank statements. The report states that "no cash register tapes were provided" and that Taxpayer "failed to provide any source documents for sales" Taxpayer did not provide the mentioned annual Z-tape summary or bank statements for review during the protest process.

Taxpayer argues that the Department estimated (1) "purchases," (2) "sales using cost of goods sold percentages," (3) "exempt sales percentage," and (4) "additional income" rather than rely on "[T]axpayer's representation[s]." Additionally, Taxpayer argues that the Department's method of estimating its cost of goods sold percentage and then sales was inappropriate. It states that "there has been no foundation presented that bizstats.com accurately represents the [T]axpayer's business" Finally, Taxpayer states that "it is incorrect to lump gasoline, lottery tickets and the other sales into one cost of goods sold percentage when the cost of goods sold percentage varies for each item."

As the audit report notes that Taxpayer "failed to provide any source documents for sales," the Department did not consider "[T]axpayer's representation[s]" during the audit as source documents sufficient to verify Taxpayer's sales. Additionally, during the protest process, Taxpayer did not provide any supporting documents, nor did it provide an alternative method for the Department to use in calculating the disputed estimates. Without any additional documentation about Taxpayer's business or an alternative method to calculate the cost of goods sold percentage for each item disputed, the Department cannot agree that its method was inappropriate.

Taxpayer's books and records were insufficient, so the Department properly relied on the best information available to verify Taxpayer's sales and determine its tax liability. Taxpayer has not met its burden to show that the proposed assessments are incorrect, and its protest is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

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