

DEPARTMENT OF STATE REVENUE

04-20140283.LOF

Letter of Findings Number: 04-20140283
Sales and Use Tax
For Tax Years 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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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 Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Rhoads 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 tax.

STATEMENT OF FACTS

Taxpayer is a convenience store with gasoline sales. The Indiana Department of Revenue ("Department") conducted an audit and issued proposed assessments of additional sales and use tax plus penalty and interest. Taxpayer protests the proposed assessments of base sales and use taxes. An administrative hearing was held. This Letter of Findings results. Additional facts will be supplied as necessary.

I. Sales and Use Tax - Liability.**DISCUSSION**

Taxpayer protests the Department's proposed assessments of additional sales and use taxes. 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 Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue before the Department is whether Taxpayer met its burden to prove the assessments are 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." Rhoads 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 the sales and use 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. The audit report indicates that the books and records supplied by Taxpayer were "significantly less than the records requested several times prior to and during the audit," and "[d]ue to the lack of records presented for audit, it was required [that] merchandise sales be estimated by the auditor." This was accomplished by "examining the vendor invoices presented for audit." The audit report indicates that, among other documentation (including vendor

invoices), the auditor reviewed "a cash register tape (monthly close report) for October 2013 activity" and "[b]ank statements (does not include canceled checks nor a check register)." The audit report discusses Taxpayer's participation in the federal Supplemental Nutrition Assistance Program (SNAP) extensively, noting that the auditor reviewed SNAP records provided by Taxpayer. However, the audit report indicates that the SNAP records were insufficient to support Taxpayer's assertions.

Taxpayer argues 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." Taxpayer states that the auditor "did not attempt to reconcile purchases to checks on bank statements" or to "reconcile sales to deposits on bank statements." In its protest letter, Taxpayer implies that the auditor did not rely on "SNAP documentation" it provided. The audit report indicates that the auditor reviewed and relied upon documentation provided by Taxpayer, including bank statements, SNAP documentation, and one monthly cash register tape. Taxpayer did not provide copies of the documentation it believes was disregarded such as copies of canceled checks or the annual Z-tape summary during the protest process.

Taxpayer argues that the Department improperly estimated (1) "purchases," (2) "sales using cost of goods sold percentages," (3) "exempt sales percentage," (4) "metered pump gasoline and diesel sales," (5) "additional income for commissions" and (6) additional income without increasing operating expenses rather than rely on "[T]axpayer's representation[s]" or, in some cases, documentation provided by Taxpayer. 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" 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."

The audit report indicates that the auditor reviewed and relied upon documentation provided by Taxpayer to calculate the proposed assessments of additional sales and use taxes. Taxpayer's "representations" were deemed insufficient unless supported by books and records pursuant to statute. Additionally, Taxpayer did not provide documentation supporting its allegation that the bizstats.com statistics relied on by the Department did not appropriately reflect Taxpayer's business. Taxpayer did not provide an alternative method to calculate the estimated percentages or documentation upon which the Department may rely to adjust the estimations. 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.

Finally, Taxpayer states that the auditor "assumed use tax was not paid on items listed on [Taxpayer's] Form 1120S rather than relying on [T]axpayer's representation that any sales tax was paid on these items at the time of purchase." It argues that the assessment of use tax on "services for repairs, maintenance and janitorial services" is "egregious." During the protest process, Taxpayer did not supply any documentation showing that use tax should not be imposed on repairs, maintenance, or janitorial services.

Taxpayer's books and records were insufficient, so the Department properly relied on the best information available, including information from bizstats.com, to verify Taxpayer's sales and determine its tax liability. Taxpayer's protest is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

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