

**Letter of Findings: 04-20140414**  
**Gross Retail Tax**  
**For the Years 2011, 2012, and 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. The 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 This document is effective on its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Operator of a gas station and convenience store failed to provide sufficient information to support its argument against the Department's sales and use tax assessments for fuel and tangible personal property sales. The operator bears the burden of proving that the Department's assessment is incorrect.

**ISSUE**

**I. Gross Retail Tax - Audit Calculations.**

**Authority:** IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-9-3; IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-5-1](#).

Taxpayer argues that the Department of Revenue's audit methodology and calculations were faulty and resulted in an over-assessment of sales and use tax.

**STATEMENT OF FACTS**

Taxpayer operates a combination gas station and convenience store. Along with gasoline and diesel fuel, Taxpayer's convenience store sells coffee, tobacco products, snack foods, automobile supplies, health and beauty supplies, candy, newspapers, cell phone accessories, grocery items and other similar products.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's sales tax records and returns. The audit determined that Taxpayer had underreported fuel and retail sales during the 2011, 2012, and 2013 tax years.

The audit concluded that Taxpayer failed to retain source documents and overstated the amount of its sales which were exempt from sales tax. The audit recalculated the amount of exempt convenience store sales. The audit resulted in the assessment of additional sales tax. Taxpayer objected to the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results.

**I. Gross Retail Tax - Audit Calculations.**

**DISCUSSION**

The Department concluded that Taxpayer overstated the amount of its exempt convenience store sales. Taxpayer disagreed, asserting that approximately thirty percent of its convenience store sales were exempt.

The audit found that Taxpayer failed to retain source sales tax documents for the years under audit. After the Department requested such documents multiple times, Taxpayer provided a report for income tax purposes that contained total purchases from the Taxpayer's business. Without any additional documentation, the Department used alternative audit procedures.

To arrive at approximate gasoline and diesel fuel sales amounts, the auditor compared Taxpayer's limited reported sales to a government pricing standards source, and discovered erroneous price amounts based upon the Taxpayer's suppliers' reports that showed fuel costs. The auditor concluded that Taxpayer had consistently

underreported both gasoline and diesel fuel sales.

Without source documents for Taxpayer's sales of other items as requested by the Department, the auditor compared the figures provided in Taxpayer's representative's income tax report to a total sales figure calculated after consulting the bizstats.com resource. This method yielded an increase in the total sales, which affected the percentage of exempt sales claimed by Taxpayer. Based on this review, the audit determined that Taxpayer over reported its exempt sales.

Taxpayer reported that approximately thirty percent of its convenience store sales were exempt but had no source documentation to verify that calculation. During the audit, Taxpayer provided some purchase invoices to Taxpayer's representative. That representative performed an analysis of the purchases and concluded that only nine percent of the sales were exempt. Based on the limited source documents Taxpayer did possess, the Department's audit accepted the revised nine percent figure.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A retail merchant - such as Taxpayer - is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." IC § 6-2.5-9-3.

During the hearing, Taxpayer's representative confirmed that Taxpayer maintained "less than organized records." The representative could not provide any purchase invoices, sales receipts, or register tapes. Instead, the representative submitted proof of cash and summaries of bank accounts, prepared after the Department's audit. Upon the Department's further review, these documents do not show cash receipts from sales transactions. The bank account summaries do not reflect total sales, nor provide any further source details to verify transactions.

As a business conducting retail transactions and collecting sales tax on behalf of the state, Taxpayer was required to maintain accurate financial records. "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). "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 [D]epartment. . . ." IC § 6-8.1-5-1(b). See also [45 IAC 15-5-1](#).

Based on the limited documentation available, the Department cannot agree that Taxpayer established that the audit assessment was "wrong" as required under IC § 6-8.1-5-1(c). Using Taxpayer's representative's own analysis, the audit reasonably determined that Taxpayer's exempt convenience store sales amounted to nine percent. In the absence of source documentation, the audit quite reasonably "extrapolated" that exempt calculation to the years at issue.

Given the fact that Taxpayer failed to retain or preserve source documentation of its day-to-day transactions, Taxpayer has not met its burden of demonstrating that the audit's conclusions were wrong as required under IC § 6-8.1-5-1(c).

### FINDING

Taxpayer's protest is respectfully denied.

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