

Letter of Findings: 04-20140574.LOF
Sales Tax
For the Year 2011

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 This document is effective on its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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 provided additional invoices to show that it was entitled to additional pre-paid sales tax credit on gasoline it purchased.

ISSUE

I. Sales Tax-Prepaid Sales Tax Credit.

Authority: IC § 6-2.5-7-3; IC § 6-2.5-7-5; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of sales tax resulting from the disallowance of prepaid sales tax credit.

STATEMENT OF FACTS

Taxpayer is a company which sells gasoline at retail through metered pumps. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer claimed too much pre-paid sales tax for the location in 2011. The Auditor stated that for prepaid sales tax the fuel purchases were overstated in 2011 and understated in 2012. Therefore, the Auditor assessed tax and disallowed a portion of Taxpayer's pre-paid sales tax credit for 2011.

Taxpayer protests the Auditor's determination that too much pre-paid sales tax was claimed. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales Tax-Prepaid Sales Tax Credit.

DISCUSSION

The Department notes that all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer protests the Department's disallowance of the prepaid sales tax credits.

IC § 6-2.5-7-3 states that a retail merchant shall collect retail tax on gasoline from a metered pump even if it is exempt. Additionally, pursuant to [IC 6-2.5-7-5\(c\)](#):

A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) an amount equal to:

- (1) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus
- (2) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

Taxpayer, as a retail merchant selling the gasoline, is responsible for collecting and remitting the sales tax on the sales of gasoline. IC § 6-2.5-7-3. Taxpayer is allowed the "prepaid credit" which it pays to its fuel supplier. IC § 6-2.5-7-5(c). Taxpayer was able to provide additional invoices that show that prepaid tax was paid. Therefore,

Taxpayer's protest is sustained subject to the result of a supplemental audit. The Audit Division will review the additional invoices and make any adjustments it deems appropriate.

FINDING

Taxpayer's protest is sustained pending a supplemental audit.

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