

DEPARTMENT OF STATE REVENUE

40-20140586P.LOF

Letter of Findings Number: 40-20140586P
Tax Administration
For Tax Years 2007-2012

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the conveniences of the reader and is not part of the analysis contained in this Letter of Findings

HOLDING

Penalties that were imposed by the Indiana Department of Revenue against a company that was subject to the utilities receipt tax (URT) were proper, the company failed to establish reasonable cause for abatement of the penalties.

ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; IC § 6-2.3-6-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); 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 15-11-2](#).

Taxpayer protests proposed penalty assessments.

STATEMENT OF FACTS

Taxpayer is a public utility that provides technology services to its independent telephone company members/owners. Taxpayer expanded its business to include additional services. Taxpayer, at the time of the Indiana Department of Revenue's ("Department") audit was registered in Indiana for retail sales tax. However, Taxpayer did not file utility receipts tax for the periods of this protest (i.e., 2007 - 2012). As a result of the audit the Department issued proposed assessments, which included penalties. Taxpayer filed a protest regarding the penalties imposed. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Penalty.

DISCUSSION

As a threshold issue, it is 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing' . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Taxpayer states that "responsibility for tax issues was directed to the Company's CFO and he was directed to consult with the Company's accounting firm ([]) on tax issues that went beyond his expertise." Taxpayer states that the CFO "had worked approximately 30 years in the telecommunications industry" and that the accounting firm Taxpayer used "works extensively with rural telecommunications companies" Taxpayer states that "[w]hen the URT was adopted [referred to hereinafter as "accounting firm"] communicated with all of its telecommunications clients to assess the revenue categories that would be subject to the URT" and that the

[accounting firm] "worked with their clients to develop processes for making quarterly estimates in accordance with the URT law." Taxpayer states in 2012 it received a "Notice to File Utility Receipts Tax Returns with the State of Indiana" and that Taxpayer's CFO responded, in part, to the Department that Taxpayer "does not conduct any activities that would warrant paying utilities receipts tax." At the hearing Taxpayer's representative, the accounting firm, stated that the accounting firm had made the determination that Taxpayer was not subject to URT. Taxpayer's protest letter also states:

As the preparer of income tax returns for [Taxpayer], [accounting firm] was aware that [Taxpayer] was making sales to non-member companies and that some of these sales were subject to sales tax. However, they failed to make the connection that this type of sale would also likely be subject to URT. [Taxpayer] contends that it relied on [accounting firm] to inform it of any taxes for which it is responsible.

Taxpayer's argument is that it relied on the mistaken advice of its accounting firm. To that end Taxpayer cites to an IRS regulation and two IRS cases, in addition to noting IC § 6-8.1-10-2.1 and [45 IAC 15-11-2](#). The federal law and federal cases cited to by Taxpayer are not controlling authority; the penalties assessed by the Indiana Department of Revenue were imposed under Indiana state law—thus Indiana's statutes, cases, and regulations are the relevant authority.

Turning to the relevant law, IC § 6-2.3-6-1 states:

(a) Except as provided in subsections (c) through (e), a taxpayer shall file utility receipts tax returns with, and pay the taxpayer's utility receipts tax liability to, the department by the due date of the estimated return. A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated utility receipts tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year which does not end on December 31, the due dates for filing estimated utility receipts tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.

(b) With each return filed, with each payment by cashier's check, certified check, or money order delivered in person or by overnight courier, and with each electronic funds transfer made, a taxpayer shall pay to the department twenty-five percent (25[percent]) of the estimated or the exact amount of utility receipts tax that is due.

(c) If a taxpayer's estimated annual utility receipts tax liability does not exceed two thousand five hundred dollars (\$2,500) the taxpayer is not required to file an estimated utility receipts tax return.

(d) If the department determines that a taxpayer's:

- (1) estimated quarterly utility receipts tax liability for the current year; or
- (2) average estimated quarterly utility receipts tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), the taxpayer shall pay the estimated utility receipts taxes due by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(e) If a taxpayer's utility receipts tax payment is made by electronic funds transfer, the taxpayer is not required to file an estimated utility receipts tax return.

(f) The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on taxpayers failing to make payments as required in subsection (b) or (d). However, a penalty may not be assessed as to any estimated payments of utility receipts tax that equal or exceed:

- (1) twenty percent (20[percent]) of the final tax liability for the taxable year; or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall be assessed only on the difference between the actual amount paid by the taxpayer on the estimated return and twenty-five percent (25[percent]) of the taxpayers's [sic] final utility receipts tax liability for the taxable year.

And IC § 6-8.1-10-2.1 states in relevant part:

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2\(c\)](#) states that the negligence penalty shall be waived if a taxpayer can establish "that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence." [45 IAC 15-11-2\(c\)](#) further states:

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer states that the penalties resulted from "a misinterpretation of the law on the part of its CFO and an oversight on the part of its accounting firm," but Taxpayer does not believe that this "rise[s] to the level of negligence" As noted, under IC § 6-8.1-5-1(c) a taxpayer bears the burden of proof, and [45 IAC 15-11-2\(b\)](#) states in relevant part that "[i]gnorance of the listed tax laws, rules and/or regulations is treated as negligence." The Department finds that Taxpayer has failed to establish reasonable cause, thus Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

Posted: 06/24/2015 by Legislative Services Agency

An [html](#) version of this document.