

## DEPARTMENT OF STATE REVENUE

04-20140567.LOF

**Letter of Findings Number: 04-20140567**  
**Sales Tax**  
**For Tax Years 2011-12**

**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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Taxpayer did not provide any documentation to substantiate its claim that the additional sales found during the audit pertained to a different business. The audit contained the correct business name and the correct Tax Identification Number. The proposed assessments were appropriate.

### ISSUE

#### **I. Sales Tax—Additional Sales.**

**Authority:** IC § 6-8.1-5-1; IC § 6-2.5-2-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests proposed assessments for additional sales tax.

### STATEMENT OF FACTS

Taxpayer is an individual. During tax years 2011, 2012, and 2013, Taxpayer was the sole proprietor of an Indiana business ("Proprietorship") that sold cell phones, cell phone plans, and cell phone accessories. The Indiana Department of Revenue ("Department") audited Proprietorship for sales tax for tax years 2011 and 2012. Proprietorship documented its sales on notepads. The Department calculated the total sales on Proprietorship's notepads and then compared the sales to the total amount that Proprietorship reported on its ST-103 forms. The Department determined that Proprietorship had underreported its sales on its ST-103s. The Department therefore issued proposed assessments for additional sales tax, penalty, and interest for tax years 2011 and 2012. Taxpayer protested the proposed assessments. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

#### **I. Sales Tax—Additional Sales.**

### DISCUSSION

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 Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. 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). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Taxpayer claims that the audit report refers to a business called "Wireless Prepaid Wireless," and that Taxpayer has never operated under that business name. Taxpayer suggests that a mistake was made during the audit and the proposed assessments must pertain to another business. However, a review of the audit report reveals that the report only refers to Taxpayer's correct business name. In addition, the audit report has the correct Tax Identification Number and the correct business address. In fact, the audit report makes no reference at all to a business named "Wireless Prepaid Wireless" and makes no suggestion that such a business even exists.

During the protest process, Taxpayer provided documents regarding its business operating expenses such as rent, utility costs, etc. None of the documentation supplied pertains to Taxpayer's actual sales during the audit period. Therefore, Taxpayer has not provided any documentation to substantiate its claim that the Department issued proposed assessments to the wrong business. Also, Taxpayer has not provided any documentation to show that its unreported sales were exempt from sales tax. Therefore, Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

### **FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 09/30/2015 by Legislative Services Agency*  
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