

DEPARTMENT OF STATE REVENUE

04-20140452.LOF
03-20140453.LOF**Letters of Findings Number: 04-20140452; 03-20140453
Sales Tax & Withholding Tax
For Tax Years 2011, 2012, and 2013**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Convenience Store failed to maintain adequate records and was responsible for the sales tax because it was statutorily required to collect and remit sales tax on tangible personal property sold. Convenience Store was responsible for withholding tax because it employed several individuals but failed to withhold tax on the wages it paid to those employees.

ISSUE**I. Sales Tax & Withholding Tax - Imposition - Burden of Proof.**

Authority: 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); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the Department's proposed assessments.

STATEMENT OF FACTS

Taxpayer operates a gas station/convenience store in Indiana. In late 2013, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit and a withholding tax audit of Taxpayer's business records for the tax years 2011, 2012, and 2013. Pursuant to the audits, the Department determined that Taxpayer failed to maintain adequate records. As a result, the sales/use tax audit found that Taxpayer had unreported sales. The Department also found that Taxpayer employed several individuals but it failed to properly withhold wages which it paid to its employees. The Department thus proceeded to assess Taxpayer additional sales tax, withholding tax, penalty, and interest based on the best information available to the Department at the time of the audits.

Taxpayer protested both sales tax and withholding tax assessments. A phone hearing was held. This Letter of Findings addresses both protests. Additional facts will be provided as necessary.

I. Sales Tax & Withholding Tax - Imposition - Burden of Proof.**DISCUSSION**

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; 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 State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

IC § 6-8.1-5-4(a) further provides:

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. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Thus, the issue is whether Taxpayer met its burden of proof to demonstrate that the Department's proposed assessment is not correct.

During the protest process, Taxpayer claimed that the Department's assessments were overstated. Specifically, Taxpayer argued that the Department's sales tax audit failed to credit Taxpayer regarding sales of water, ice, and other items it purchased from Sam's for resale in its store. Taxpayer also claimed that the audit did not consider its sales pursuant to the "SNAP" program. Additionally, Taxpayer claimed that the owner of the store worked more hours than it reported and thus should not be held liable for additional withholding tax. However, Taxpayer provided no documents or records to support its assertions. Thus, given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met its burden of proof to demonstrate the proposed assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied.

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