

DEPARTMENT OF STATE REVENUE

04-20150220.LOF

Letter of Findings Number: 04-20150220
Sales/Use Tax
For Tax Years 2011 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Sole proprietor/individual failed to maintain adequate records and was responsible for the sales tax because he was statutorily required to collect and remit sales tax on tangible personal property sold.

ISSUE**I. Sales/Use 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 is a sole proprietor who is in the business of selling clothing, accessories, and seasonal products, including candles, lotions and jewelry. In 2014, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit of Taxpayer's business records for the tax years 2011 and 2012. Pursuant to the audit, the Department determined that Taxpayer failed to maintain adequate records. As a result, the audit found that there are discrepancies in remitting sales/use tax and thus assessed Taxpayer additional sales tax, use tax, interest, and negligence penalty based on the best information available to the Department at the time of the audit.

Taxpayer protested the assessment regarding sales tax. A phone hearing was held for which Taxpayer explained the basis for his protest and also requested additional time to submit additional supporting documentation. The Department continued the hearing to allow Taxpayer time to provide additional documentation. The Department closed the hearing on November 17, 2015, on the ground that neither Taxpayer nor his representative submitted additional supporting documentation by the agreed due date. This Letter of Findings addresses Taxpayer's protest based on the information available to the Department. Additional facts will be provided as necessary.

I. Sales/Use Tax - Imposition - Burden of Proof.**DISCUSSION**

The Department assessed additional tax pursuant to the sales/use tax audit. Taxpayer disagreed.

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. (Emphasis added).**

Thus, the issue is whether Taxpayer met his burden of proof to demonstrate that the proposed assessment is not correct.

The audit noted that:

To verify that all sales tax collected was remitted, a reconciliation schedule for CY 2011 and CY 2012 was created between the gross sales per the ST-103 and the gross sales per the taxpayer's books. . . . [T]here were many daily records that were not included nor found. . . . [T]here were a few months missing for certain locations. . . .

Taxpayer, in a letter dated April 20, 2015, stated, as follows:

I am writing . . . to protest several parts of the tax assessment resulting from my Audit. There are several months that do not match my records for the sales receipts and journals. There is one month that results in a \$71000.00 error. Due to how many receipts are involved I am unable to send proof attached with this letter. . . . Please accept this letter as protest and allow me to present my differences. . . .

Neither Taxpayer nor his representative presented any supporting documentation by the agreed due date. On November 16, 2015, Taxpayer informed the Department that it had filed Chapter 11 bankruptcy.

Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met his burden of proof to demonstrate the proposed assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied.

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