

**Letter of Findings: 02-20160214
Corporate Income Tax
For the 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Combination Convenience Store/Gas Station was unable to overcome its burden of establishing that any portion of the Department's income tax assessment was wrong because Convenience Store/Gas Station's original point-of-sales records were not accurate.

ISSUE

I. Corporate Income Tax - Estimated Tax Liability.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department's assessment of corporate income tax liability is excessive and overstates the amount of actual income earned during the years at issue.

STATEMENT OF FACTS

Taxpayer is a company which operates a combination gas station and convenience store. Taxpayer sells prepaid phone cards, gasoline, lottery tickets, food items, cigarettes, and other tobacco products. Taxpayer also sells prepared food items which are consumed on its premises.

The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's business records, sales tax returns, and income tax returns. Taxpayer's original income tax returns reported the same amount of sales as Taxpayer reported on its sales tax returns.

The Department's audit found that Taxpayer underreported the amount of its sales. The Department assessed Taxpayer additional sales tax and additional income tax. Taxpayer disagreed with both assessments. An administrative hearing was conducted by telephone during which Taxpayer's representatives explained the basis for its objections.

This Letter of Findings addresses only Taxpayer's objections to the income tax assessment.

I. Corporate Income Tax - Estimated Tax Liability.

DISCUSSION

Taxpayer argues that the income tax assessment is incorrect and should be adjusted. Taxpayer concludes that the proposed assessments are "very high and unreasonable."

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 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). Thus, a taxpayer is required to provide documentation explaining and

supporting his or her challenge that the Department's position 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong.

The Department's audit found that Taxpayer reported approximately \$4,900,000 in gasoline sales during the years under review. In addition, Taxpayer reported approximately \$2,500,000 in convenience store sales of which \$540,000 was reported as exempt from sales tax. However, the audit report questioned those reported amounts stating that "there were many inconsistencies, contradictions, unexplained amounts, and unanswered questions."

The audit reviewed Taxpayer's monthly gasoline purchase records and corresponding gasoline sales tax returns (ST-103MP). The audit report states that Taxpayer underreported gasoline sales during 26 of the 30 months under review. According to the audit report, "eight months were understated by exact amounts of \$3,000, \$4,000, \$5,000, \$6,000, and \$10,000."

The Department's audit also reviewed sales of items other than gasoline and found "large changes with no solid explanation as to the underlying cause." For example, the audit noted that Taxpayer made approximately \$520,000 in tobacco purchases during 2012 but reported tobacco sales during that year of only \$427,000.

The Department concluded that Taxpayer owed approximately \$28,000 in additional income tax.

Taxpayer does not object to any audit adjustments made reflecting the underreporting of its gasoline sales. Taxpayer does object to the extrapolation of data based on its tobacco sales to its total convenience store sales. Instead, Taxpayer argues that its own "point of sales" records should have been used to calculate its convenience store sales.

Taxpayer concludes that - based on its own analysis - that it owes approximately \$7,600 in additional income tax. To that end, Taxpayer has provided copies of the "point of sales" reports originally considered during the audit. These reports purport to establish that the convenience store sales accurately report the amount of sales of bakery, dairy, candy, deli, and similar sales because those particular records are correct.

Taxpayer does not object to any portion of the income tax assessment attributable to the underreporting of its fuel sales. However, Taxpayer believes that portion of the assessment attributable to its convenience store sales should be adjusted downward. In effect, Taxpayer asks that the Department ignore one portion of its sales reports but accept without question another portion of those same reports. Taxpayer asks too much. The point-of-sales reports are part-and-parcel inherently flawed because Taxpayer clearly underreported its fuel sales bringing into serious question the accuracy of all its reported sales including both fuel and convenience store sales.

It should be pointed out that, "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 tax by reviewing those books and records." IC § 6-8.1-5-4(a). The very basis for that requirement is that Taxpayer maintain demonstrably accurate reports. Taxpayer has failed to do so and now is in a position that makes it difficult for Taxpayer to overcome its statutory threshold that it prove that any portion of the assessment was wrong. IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

Posted: 06/29/2016 by Legislative Services Agency
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