

Letter of Findings: 04-20160087
Sales Tax
For the Year 2012-2014

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Gas station/convenience store, was unable to meet its burden of establishing that the Department's proposed assessments of additional sales tax were wrong; Gas station failed to maintain complete, contemporaneous, accurate records of fuel and convenience store items sales.

ISSUE

I. Sales Tax - Records.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); Dep't 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 15-5-1](#).

Taxpayer argues that the Department of Revenue overstated the amount of sales due.

STATEMENT OF FACTS

Taxpayer is a combination gas station / convenience store operating in Indiana. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of the business location. That audit resulted in an assessment of additional sales tax.

As a result, the Department issued Taxpayer an assessment of additional sales tax. Taxpayers disagreed with the assessment of sales tax and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings addresses the assessments of sales tax.

I. Sales Tax - Records.

DISCUSSION

The issue is whether Taxpayer established that the assessments of Indiana sales tax are unwarranted on the ground that the Department's audit overstated the amount of convenience store and fuel sales.

As a threshold issue, it is the Taxpayers' 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.'" Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

The Department's audit requested copies of complete business records in order to determine if sales tax had

been properly collected and remitted. The audit requested "z-tapes, sales invoices, sales journals, and bank statements." Taxpayer's representatives explained that these records were not retained because "that would be a lot of paper." Taxpayer's representatives did provide copies of bank statements.

The Department's audit reviewed records of fuel sales. The audit noted "large variances" in the amount of fuel purchased and the amount of fuel sold. The audit report stated that, those "variances" exceeded one million dollars. In the absence of convenience store sales records, the audit considered records of store purchases and used those amounts to determine an amount of store sales.

The audit also reviewed business purchases. In the absence of more direct information, the audit was unable to determine if tax was paid on the purchase of capital and other items. Based on the bank records, the audit determined that the businesses paid for "repair and maintenance supplies, store expenses and miscellaneous supplies" along with expenses for the "payment of leased equipment." The audit assessed use tax on these transactions.

In its response to the audit's conclusion that the stores under-reported their fuel sales, Taxpayer states that the audit was without factual foundation in determining the purported price of the fuel sold at the various locations. In particular, Taxpayer's representatives criticize the audit's reliance on information available from the United States Energy Information Administration (www.eia.gov) to determine the price of fuel sold at the four business locations. Taxpayers repeat their assertion that reliance on this information constitutes "ONLY A GUESTIMATE OF SALES."

According to the Taxpayer's representatives, the Department should have relied on more "traditional audit procedures" to determine the fuel and store sales. According to the representatives, the audit should have relied on the "reconciliation of bank deposits, T-Method Cash Accounting, etc." to determine the store and fuel sales.

Taxpayer's representatives state that the audit results are further flawed by the failure to consider income as reported on the Taxpayer's state and federal income tax returns, the failure to account for transfers of money between business bank accounts, the failure to account for deposits made by the various business owners for additional working capital needs, and the failure to properly account for deposits from [the] business owners "other business interests."

As individuals operating multiple locations conducting retail transactions and collecting sales tax on behalf of the state, Taxpayers were required to maintain complete, contemporaneous, and accurate financial records including cash register receipts. "Every person subject to a listed tax must keep books and records so that the [D]epartment can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). The "records" referenced "include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks." Id.

In the absence of accurate or complete records, Indiana law requires that the Department issue a proposed assessment based on the best information the Department can obtain. "If the [D]epartment reasonably believes that a person has not reported the proper amount of tax due, the [D]epartment shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment." IC § 6-8.1-5-1(b). See also [45 IAC 15-5-1](#).

The Department is unable to agree that Taxpayer has made any coherent or quantifiably specific objection to the results of the audit. Rather than offering a specific alternative, Taxpayer has simply set forth a litany of complaints and criticisms. The Department does not disagree with Taxpayer suggestion that there may be alternative methods of determining the income from these four locations, but Taxpayer has done nothing to meet their burden establishing that the assessments are "wrong" as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protests are denied.

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