

Memorandum of Decision: 04-20170905R
Gross Retail Tax
For the Year 2016

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HOLDING

Former Indiana Business Owner was entitled to a refund of money levied from her bank accounts because the Department failed to abide by the terms of a settlement agreement entered into with Business Owner.

ISSUE

I. Gross Retail Tax - Collection.

Authority: IC § 6-2.5-4-4; IC § 6-8.1-3-17(a); IC § 6-8.1-5-3; IC § 6-8.1-8-8.

Taxpayer argues that she is entitled to a refund of money levied from her bank accounts and applied against the sales tax liability of her and her former business.

STATEMENT OF FACTS

Taxpayer is the former owner of an Indiana business which provided services and accommodations to its customers.

The Indiana Department of Revenue ("Department") together with state and local law enforcement agencies investigated Taxpayer's business and determined that the business should have been collecting sales tax from its customers.

The Department issued seven jeopardy tax assessments against the business and Taxpayer individually on the ground that the Taxpayer and the business together owed approximately \$146,000 in uncollected sales tax.

Taxpayer sought judicial review of the Department's action in a county court. Taxpayer, business, and the Department entered into a settlement agreement dated March 2013. In that agreement, the Department agreed to release and withdraw the jeopardy tax warrants filed with the county authority.

Taxpayer and business agreed to withdraw the judicial action brought against the Department.

Taxpayer and business agreed to conduct no further business in the Indiana county in which the business had been located.

Taxpayer and business agreed to not operate any other business in the Indiana county or any other business in the State of Indiana.

The parties agreed that the business would "be dissolved as an entity"

In August 2016 - at the behest of the Department - the Department's authorized collection agent levied and recovered approximately \$87,000 from Taxpayer's individual bank accounts.

Taxpayer unsuccessfully sought relief directly from the Department's collection agent. Taxpayer thereafter sought relief from the Department which agreed to cancel the remainder of the unpaid sales tax assessment - approximately \$59,000.

Taxpayer filed with the Department a GA-110L ("Claim for Refund") dated June 2017 seeking a return of the \$87,000 levied from her bank accounts. The Department responded in a July 2017 letter which denied the refund

explaining as follows:

The Department has reviewed the claim and hereby denied the claim in full [because] [a]n overpaid amount does not exist on your account at this time.

Taxpayer disagreed with the decision denying the \$87,000 refund and submitted a timely protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the hearing. Taxpayer agreed to waive any objection to disclosing the provisions of the confidential March 2013 settlement agreement. This Memorandum of Decision results.

I. Gross Retail Tax - Collection.

DISCUSSION

The issue is whether the Taxpayer is entitled to a refund of the \$87,000 levied from her bank accounts on the ground that the prior settlement agreement precluded the collection action undertaken by the Department's collection agent.

At the outset, it is important to note what this decision is *not* about. This decision is *not* about whether or not Taxpayer's former business should or should not have been collecting sales tax on the purported rental of accommodations to her business guests; it may very well have been. IC § 6-2.5-4-4.

This decision is *not* whether or not the Department was justified or authorized to issue the 2012 "jeopardy assessments;" it may very well have been. IC § 6-8.1-5-3.

This decision is *not* whether the Department's collection agent had the legal authority to levy an individual's bank accounts in order to satisfy unpaid state taxes owed by the individual; it does. IC § 6-8.1-8-8.

The issue is whether the Department violated the settlement agreement entered into between Taxpayer, business, and the Department's representative - the Indiana Attorney General's Chief Counsel.

The agreement imposed upon the Department the obligation to release the jeopardy warrants filed with the Indiana county within 45 days.

The Department initially fulfilled its obligation to release the warrants but did not abate or cancel the underlying sales tax liabilities. The agreement said nothing about the underlying sales tax liabilities. Those liabilities went unsatisfied though - after the agreement was executed - were unenforceable.

Some four years later, the Department chose - for reasons unknown - to release the identical warrants addressed in the agreement and to initiate collection actions to satisfy the original sales tax liability.

Those collection actions resulted in the levy of the Taxpayer's bank accounts in the amount Taxpayer now seeks to retrieve. Taxpayer argues the levy was unjustified. In this regard, Taxpayer is correct and the Department is wrong.

IC § 6-8.1-3-17(a) grants the Department authority to settle tax disputes under the terms specified:

(a) Before an original tax appeal is filed with the tax court under [IC 33-26](#), the commissioner may settle any tax liability dispute if a substantial doubt exists as to:

- (1) the constitutionality of the tax under the Constitution of the State of Indiana;
- (2) the right to impose the tax;
- (3) the correct amount of tax due;
- (4) the collectability of the tax; or
- (5) whether the taxpayer is a resident or nonresident of Indiana.

Under IC § 6-8.1-3-17(a), the Department acted within its authority to settle the disputed tax amounts but failed to fulfill its obligation under that settlement agreement.

Although the 2013 agreement did not require abatement of the original \$146,000 sales tax liability, it did require that the Department "release" and "withdraw" the warrants. It was the 2016 release of those same warrants which lead to the levy of Taxpayer's bank accounts.

The Department acted without authority in enforcing the 2012 warrants and now must return Taxpayer's \$87,000, must return any collection fees imposed, and must refund any amount of interest required under Indiana law.

FINDING

Taxpayer's protest is sustained.

February 13, 2018

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