

**Letter of Findings: 04-20171249**  
**Gross Retail and Use Tax**  
**For the Years 2014, 2015, and 2016**

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### HOLDING

Following an audit assessment of additional sales and use tax based on the "best information available" to the Department, Indiana Convenience Store failed to establish that the Department's assessment of additional tax was overstated or unwarranted.

### ISSUE

#### **I. Gross Retail and Use Tax - Imposition.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-1(b); IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC §§ 6-2.5-5-1 to 46; IC § 6-2.5-9-3; IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-5-4(c); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-5-1](#).

Taxpayer argues that the Department's assessment of additional sales and use tax is overstated and unwarranted.

### STATEMENT OF FACTS

Taxpayer is an Indiana business which operates a gas station and convenience store. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns for the years 2014, 2015, and 2016. The audit resulted in an assessment of additional gross retail (sales) and use tax.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

#### **I. Gross Retail and Use Tax - Imposition.**

### DISCUSSION

The issue is whether Taxpayer has provided sufficient evidence necessary to establish that the proposed assessment of additional sales and use tax was wrong.

Taxpayer sells motor fuel along with convenience store items such as frozen food, bakery items, dairy items, soft drinks, chips, cigarettes, beer, candy, and automobile products. As to its sales tax obligations, Taxpayer was unable to provide business records such as "z-tapes" or general ledger entries for the years under review. Lacking those records, the Department reviewed Taxpayer purchase records for a two-month period *subsequent* to the audited years. According to the Department's audit period, those two "months were selected by the [T]axpayer as being the first available periods for which they had not disposed of the records . . . ."

The Department's audit relied on the available purchase records to determine which of Taxpayer's goods were exempt from sales tax and which were subject to the tax. The audit report noted that there was no specific information to verify that any of its sales would have been exempt.

With the available purchase records in hand, the audit relied on "BizStats" to "determine what the [cost of goods] total should have been" and relied on that same source to "determine the adjustment to exempt sales."

Taxpayer did not pay use tax during the years under audit. The Department assessed use tax on Taxpayer's purchase of a cash register, ice machine, and various lighting fixtures because Taxpayer did not pay sales tax when it purchased those devices.

Taxpayer objects to the Department's method of calculating its sales and use tax liability because - according to Taxpayer - the methodology results in an assessment which overstates the amount of tax due.

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 Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC §§ 6-2.5-5-1 to 46. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-1-2; IC § 6-2.5-4-1.

A retail merchant - such as Taxpayer - is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." IC § 6-2.5-9-3.

A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

At the outset, the Department notes that Taxpayer failed to fulfill its statutory responsibility to keep and maintain the records necessary to verify its sales transactions. 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). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times." IC § 6-8.1-5-4(c). In addition, the Department also points out that Taxpayer had been the subject of a previous sales and use tax audit and that its failure to maintain records was an issue at that time.

Under Indiana law, Taxpayer did not have an option of whether or not to maintain the z-tapes and general ledger records; Taxpayer "must" keep records and "must" make those records available to the Department. In the absence of those records, the Department is required to issue an assessment based on the best information available. IC § 6-8.1-5-1(b) provides that "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." (*Emphasis added*). See also [45 IAC 15-5-1](#).

Other than arguing that the pending assessment is excessive and unwarranted, Taxpayer has provided no substantive information which establishes that the assessment is "wrong." Taxpayer objects to the audit's methodology but can point to no specific misstep committed by the Department nor can it present a reasonable, verifiable alternative to the audit's final determination.

The Department did not overstep its authority in assessing the additional tax nor did it err in assessing the tax based on the information available to it. Taxpayer has not met its burden under IC § 6-8.1-5-1(c) of establishing that the assessment was "wrong."

## FINDING

Taxpayer's protest is respectfully denied.

March 20, 2018

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