

Final Order Denying Refund: 04-20181151
Gross Retail Tax
For Tax Period December 2016

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Determination.

HOLDING

Information Technology Company was not entitled to an additional refund of collection fees because it failed to demonstrate that it timely responded to notices from the Department.

ISSUE

I. Tax Administration - Refund of Collection Fees.

Authority: IC § 6-2.5-6-1; IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Ind. Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Sq. Amoco, Inc. v. Ind. Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer protests the partial denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer is an out-of-state company that provides imaging and information technology services to its customers. In May 2017, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for unpaid sales tax for tax period December 2016 based upon the best information available to the Department. The Department then issued a Demand Notice for Payment, dated August 9, 2017. The liability advanced to a tax warrant, which was issued on September 22, 2017. As part of its collection activities, the Department employed a third-party collection agency to collect amounts which had been determined that Taxpayer owed in Indiana sales tax.

Taxpayer was contacted by the Department's third-party collection agency in September 2017, and Taxpayer made a payment to the collection agency on or about September 28, 2017. On October 1, 2017, Taxpayer filed a ST-103 for December 2016 reporting zero sales tax liability for that period. Taxpayer subsequently filed a GA-110L Claim for Refund form. The Department refunded a portion of the amount Taxpayer paid, minus an amount for collection fees. Taxpayer protests the denial of refund of the collection fees. A telephonic administrative hearing was held and this Final Order Denying Refund results. Further facts will be supplied as necessary.

I. Tax Administration - Refund of Collection Fees.

DISCUSSION

Taxpayer protests the Department's denial of its claim for refund concerning collection fees for the December 2016 tax period (the "Tax Period at Issue"). The Department denied a portion of Taxpayer's refund because "[a]mount denied was allocated to collection fees which are not refundable." In this case, Taxpayer's refund claim stemmed from a proposed assessment; it must be noted that all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Sq. Amoco, Inc. v. Ind. Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Ind. 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. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Ind. Dep't of State Revenue*, 977

N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we 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).

The Department determined that Taxpayer had not remitted Indiana sales tax for Tax Period at Issue. Due to the fact that Taxpayer failed to file a monthly ST-103 sales tax return for the Tax Period at Issue, the Department based its calculations of sales tax due for the Tax Period at Issue on the best information available ("BIA") to the Department. The Department sent a proposed assessment and demand notice for the outstanding sales tax liability. Eventually, after receiving no response to those notices, the Department issued a tax warrant for the outstanding obligation and the matter was turned over to a third-party collection agency.

After receiving notice from the third-party collection agency, Taxpayer remitted payment to the collection agency for the amount of the liability, including base tax, penalty, interest, and collection fees. Taxpayer submitted a Claim for Refund in December 2017. Ultimately, the Department determined that Taxpayer did not owe the sales tax at issue and issued a refund of the sales tax that had been assessed, but retained an amount for the collection fees.

As an initial matter, the Department was authorized in issuing the proposed assessments to taxpayer based upon the best information available. IC § 6-8.1-5-1 provides in relevant part:

(b) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax **on the basis of the best information available to the department**. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

(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.** (Emphasis added).

IC § 6-8.1-5-1(d) also provides that a taxpayer has sixty days from the date the notice of proposed assessment is mailed to pay the assessment or file a written protest. In May 2017, the Department issued a notice of proposed assessment for the Tax Period at Issue based upon Taxpayer's failure to close its registration or file returns for sales tax with the Department. Taxpayer has not provided documentation to show that it responded to the notice of proposed assessment within the sixty-day statutory time period.

Because Taxpayer did not respond to the proposed assessment in a timely manner, the Department then issued a demand notice to Taxpayer in accordance with IC § 6-8.1-8-2, which states in relevant part:

(a) Except as provided in [IC 6-8.1-5-3](#) and sections 16 and 17 of this chapter, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

(1) **That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.**

(2) The statutory authority of the department for the issuance of a tax warrant.

(3) The earliest date on which a tax warrant may be filed and recorded.

(4) The statutory authority for the department to levy against a person's property that is held by a financial institution.

(5) The remedies available to the taxpayer to prevent the filing and recording of the judgment

(b) **If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established**

under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10[percent]) of the unpaid tax is added to the total amount due. **(Emphasis added).**

As provided by IC § 6-8.1-8-4:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. **The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees** **(Emphasis added).**

In this case, the proposed assessment advanced through the legally required procedures, and there is a presumption that Taxpayer received the notices. See *P/S, Inc. v. Indiana Dep't of State Revenue*, 853 N.E.2d 1051, 1054 (Ind. Tax Ct. 2006) ("When an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received.") The Department was authorized to issue the demand notice and tax warrant, employ a collection agency to collect the debt related to the tax warrant, and to include a collection fee in the total liability. Taxpayer did not provide any documentation showing that it responded to the demand notices within the then ten-day statutory period.

Taxpayer did not sufficiently demonstrate that it made efforts to file an ST-103 for the Tax Period at Issue until after the BIA assessment, demand notice, and tax warrant had been issued. Taxpayer stated that it believed that the returns had been timely filed via fax, but was only able to provide a copy of the fax report from that time period showing the fax numbers, dates, times, and statuses; no records were provided showing what documents were actually faxed to the Department. Additionally, Indiana statute requires taxpayers to file ST-103 forms electronically through the Department's online tax filing program. IC § 6-2.5-6-1(f). Thus, even if Taxpayer had faxed the missing returns to the Department, this would not have been a valid means of filing the returns.

Without additional documentation, the Department is unable to determine the nature of the correspondence Taxpayer sent to the Department and whether those documents adequately responded to the Department's notices. Taxpayer's documentation shows that it did not contact the Department to file its monthly return for December 2016 until October 1, 2017, which was after the tax warrant had already been issued and third-party collection efforts had been undertaken. The refund denial letter is correct in stating that once a liability advances to the warrant stage, collection fees are nonrefundable.

The documentation provided by Taxpayer does not sufficiently show that Taxpayer timely responded to the Department's notices, and does not show that Taxpayer contacted Department prior to the initiation of collection actions. Due to the missed statutory deadlines by Taxpayer, the Department incurred the collection fees from the third-party collection agency which it would not have incurred with a timely response from Taxpayer. Therefore, the Department is correct to retain an amount equal to the collection fees it incurred.

FINDING

Taxpayer's protest is respectfully denied.

May 21, 2018

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