

Final Order Denying Refund: 04-20181645
Sales Tax
For Tax Year 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

Indiana 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 § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *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 Indiana company that was in the business of reselling event tickets. In 2016, the Indiana Department of Revenue ("Department") issued Taxpayer proposed assessments for unpaid sales tax for the tax periods of May, June, July and September 2016 ("Tax Periods at Issue") based upon the best information available to the Department. The Department then issued demand notices for payment, which then advanced to tax warrants. 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.

On June 13, 2018, Taxpayer filed a BC-100 form closing its sales tax account with the Department. Taxpayer also filed the missing monthly sales tax returns (Form ST-103) reporting zero tax liability. 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 and requested a final determination without a hearing. This Final Order Denying Refund results based on the information submitted by Taxpayer and the Department's records. 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. The Department denied a portion of Taxpayer's refund because "[a]mount denied has been 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 unpaid 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).

The Department determined that Taxpayer had not filed ST-103 forms nor remitted Indiana sales tax for the Tax

Periods at Issue. Due to the fact that Taxpayer failed to file monthly ST-103 sales tax returns for the Tax Periods 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 proposed assessments and demand notices for the outstanding sales tax liabilities. Eventually, after receiving no responses to those notices, the Department issued tax warrants for the outstanding obligation and the matter was turned over to a third-party collection agency.

After receiving notice of levy, Taxpayer filed the missing returns for the Tax Periods at Issue. Taxpayer submitted a Claim for Refund on February 16, 2018. Ultimately, the Department determined that Taxpayer had overpaid its sales tax liability for the Tax Periods at Issue and refunded the base tax, penalties and interest, but retained an amount for 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. The Department issued notices of proposed assessment for the Tax Periods at Issue based upon Taxpayer's failure to close its registration or file returns for sales tax with the Department. These proposed assessments were issued to Taxpayer on August 15, 2016; September 14, 2016; October 11, 2016; and December 12, 2016. Taxpayer has not provided documentation to show that it responded to the notices of proposed assessment within the sixty-day statutory time period.

Because Taxpayer did not timely respond to the proposed assessments, the Department then issued demand notices 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 twenty (20) 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.

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

(b) **If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the twenty (20) 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%) of the unpaid tax is added to the total amount due. **(Emphasis added).**

(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 assessments advanced through the legally required procedures. Taxpayer asserts that it did not receive the notices because they were mailed to an incorrect address. However, Taxpayer has provided no documentation to support its assertion that the notices went to some other address beside the address on file for Taxpayer. Taxpayer filed form BC-100 with the Department on May 22, 2016, providing the identical address to which the Department notices were mailed. There is a legal 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 proposed assessments, demand notices and tax warrants; employ a collection agency to collect the debt related to the tax warrant; and to include a collection fee in the total liability pursuant to the above-mentioned statutory provisions. Taxpayer did not provide any documentation to demonstrate that it responded to the proposed assessments and demand notices within the statutory time periods. As a result of Taxpayer's failure to respond, the Department incurred collection costs from the third-party collection agency.

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. The Department properly notified Taxpayer and followed statutory procedures each step of the way. While the collection agency retained a portion of the money as a result of completing its collection effort, the Department had refunded Taxpayer the money which the Department received. The collection fees were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to refund the collection fees. The refund denial letter is correct in stating that once a liability advances to the warrant stage, collection fees are nonrefundable.

FINDING

Taxpayer's protest is respectfully denied.

July 30, 2018

Posted: 09/26/2018 by Legislative Services Agency
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