

Letter of Findings: 04-20170880
Gross Retail Tax
For the Years 2014, 2015, and 2016

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed with Combination Gas Station and Convenience Store's argument that the Department's proposed assessment of additional sales tax was overstated because Combination Gas Station and Convenience Store provided evidence that the assessment understated the amount of its exempt sales transactions.

ISSUE

I. Sales Tax - Exempt Convenience Store Sales.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-1(b); IC § 6-2.5-4-1; IC § 6-2.5-5 et seq.; IC § 6-2.5-5-33; 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); *Dept. 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's assessment of additional sales tax is overstated because the Department understated the amount of its exempt convenience store sales.

STATEMENT OF FACTS

Taxpayer operates a combination gas station and convenience store. Taxpayer's business is located in Indiana.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns. According to the Department's written report, "The [T]axpayer could not or was unwilling to provide z tapes of sales made." The Department based its final assessment by comparing Taxpayer's bank sales to its "total sales." The Department, however, was unable to determine the exact amount of Taxpayer's exempt sales but chose to assume that 5 percent of Taxpayer's sales were exempt from sales tax. The Department based its assumption on "historical data where inside exempt store sales should not be over 5[percent] . . ."

The Department's audit resulted in a proposed assessment of additional sales tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. Taxpayer submitted additional documents purporting to support its position that it conducted additional exempt sales than those that were allowed by the Department. This Letter of Findings results.

I. Sales Tax - Exempt Convenience Store Sales.

DISCUSSION

Taxpayer argues that the assessment of sales tax is overstated because the Department understated the amount of exempt sales which occurred at its convenience store. The issue is whether the additional documentation supplied along with its administrative protest supports Taxpayer's position.

As a threshold issue, it is the Taxpayer's responsibility to establish that the 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.'" *Dept. 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.

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 et seq. 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.

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 that 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 the absence of contemporaneous records, the Department is required by law to issue an assessment based upon whatever alternative means may be 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](#).

Taxpayer submitted additional records of its EBT ("Electronic Benefit Transfer") transactions which - according to Taxpayer - justify its position that that exempt percent should be greater than that allowed by the Department's audit. See IC § 6-2.5-5-33. In addition, Taxpayer provided additional records of its total sales of lottery tickets.

Taxpayer has provided additional documentation buttressing its argument that the Department's assessment was overstated and justifies the Audit Division's consideration of the additional EBT and lottery sales documents. Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of "proving that the proposed assessment is wrong"

HOLDING

Subject to review and recalculation of the proposed assessment by the Department's Audit Division, Taxpayer's protest is sustained.

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