

DEPARTMENT OF STATE REVENUE

01-20190848.LOF
04-20190856.LOF**Letters of Findings Numbers: 01-20190848; 04-20190856
Income Tax & Sales and Use Tax
For Tax Years 2016-17**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Retail business provided sufficient documentation to support different sales figures than were used to determine the Department's sales tax assessments for the business and income tax assessments for its shareholders. Therefore, the Department's proposed assessments for sales tax and income tax are improper and new assessments based on these documents will be issued.

ISSUE**I. Sales Tax—Underreported Sales.**

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-2.5-2-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest proposed assessments for additional sales tax.

STATEMENT OF FACTS

Taxpayers are an Indiana S-Corp operating as a convenience store and the individual shareholders who own and operate the convenience store. As the result of an audit on the convenience store, the Indiana Department of Revenue ("Department") determined that Taxpayers had sales tax and individual income tax liabilities due to underreported taxable sales for the tax years 2016 and 2017. The Department therefore issued separate proposed assessments for sales tax, individual income tax, and penalties and interest for those years. Taxpayers protested a portion of the sales tax and income tax assessments, claiming that the audit overestimated the underreported sales. Since the individual income directly resulted from the underreported sales, both protests were addressed simultaneously in a single administrative hearing. This document addresses both protests and will address the company and the individuals collectively as "Taxpayers." Further facts will be supplied as needed.

I. Sales Tax—Additional Sales.**DISCUSSION**

Taxpayers protest a portion of the Department's proposed assessments of sales and individual income tax for the tax years 2016 and 2017. Specifically, Taxpayers state that the Department's audit did not account for the store's daily cash register tapes in its audit, which meant the Department overstated total sales and subsequently overestimated income for the company shareholders.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing 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 Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. 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, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. *The retail merchant shall collect the tax as agent for the state.* (Emphasis added).

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Next, the Department refers to IC § 6-8.1-5-1(b), which states:

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. (Emphasis added).

Also, the Department refers to IC § 6-8.1-5-4(a), which states:

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. *The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.* (Emphasis added).

Therefore, all taxpayers subject to a listed tax must keep books and records such as, but not limited to, invoices, register tapes, receipts, and cancelled checks, as provided by IC § 6-8.1-5-4(a). 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, as provided by IC § 6-8.1-5-1(b).

In the instant case, Taxpayers failed to provide daily cash register tapes for 2016 and 2017 to the auditor, which is why the audit was completed based on general information about companies in the same line of business. However, at the hearing, the Taxpayers brought in an accountant who provided a summary of the daily tapes and explained his calculations of their effect on tax liability. The accountant confirmed that his summaries were created by personally examining the tapes himself. At the request of the hearing officer, Taxpayers provided complete daily cash register tapes for four of the 24 contested months. The hearing officer confirmed that these tapes match the accountant's summary.

Some tapes were missing from the first half of 2016 due to illness of the store manager. The accountant estimated sales from these missing tapes by using the average total taxable sales per day for the 2016 tax year. After finding the total taxable sales figures for each year, the accountant recalculated the income flowing through to the individual shareholders. These calculations resulted in reduced liabilities for the Taxpayers.

Taxpayers' records and estimations are the best information available for determining the amount of tax owed. Moreover, Taxpayers' calculations relying on these records and estimations are sufficient to demonstrate that the Department's proposed assessments should be adjusted to account for the best information now available to the Department. The Department will therefore issue proposed assessments based on the information provided by Taxpayers.

FINDING

Taxpayers' protest is sustained.

November 1, 2019

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