

DEPARTMENT OF STATE REVENUE

04-20191199.LOF

Letter of Findings Number: 04-20191199
Sales Tax
For Tax Years 2016 and 2017

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Gas station/convenience store did not provide sufficient documentation to support its protest. Therefore, Gas station/convenience store did not meet the burden of proving the proposed assessments wrong.

ISSUE**I. Sales Tax—Taxable Sales.**

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *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); *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010).

Taxpayer protests the imposition of sales tax.

STATEMENT OF FACTS

Taxpayer operates an Indiana convenience store with fuel sales. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer failed to collect and remit the proper amount of sales tax for the tax years 2016 and 2017. The Department issued proposed assessments for sales tax, penalty, and interest for those years. Taxpayer protested these assessments, an administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax—Taxable Sales.**DISCUSSION**

Taxpayer protests the imposition of additional sales tax for tax years 2016 and 2017. The additional tax was the result of four findings made during the audit as discussed below.

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, the Department had no records to review and so used the best information available in reaching its conclusion that Taxpayer did not report the proper amount of tax due.

During the audit the Department made four findings which resulted in additional sales tax. First, the Department found that in December of 2016 the sales tax collected, according to the monthly register Z-tape report was \$4,697.81. However, Taxpayer only remitted \$4,053.49 to the Department; resulting in an assessment of \$644.32. Second, the audit found that Taxpayer had unsubstantiated negative adjustments on the documentation supporting its sales tax returns in both 2016 and 2017. According to the audit, Taxpayer could neither explain nor justify these negative adjustments, therefore, the negative adjustments were added back, resulting in additional sales tax due. Third, the audit found that Taxpayer had unreported propane sales in both 2016 and 2017. It appears that Taxpayer accidentally removed those sales from the returns and included no indication that the sales were otherwise exempt.

The fourth and final audit adjustment was a bit more complicated. During the audit, the Department attempted to reconcile Taxpayer's Z-tape sales to the revenue Taxpayer reported on line one of its income tax returns. The audit started with cash sales per the Z-tapes and credit card sales. Money orders were removed from that amount because the commissions Taxpayer receives on those sales are reported on a different line of the income tax return. The audit also removed net lottery sales because the commission Taxpayer receives for these sales are recorded on another line in the return. Lottery sales were removed on a net basis as opposed to gross. This was done because the money Taxpayer used from the register to pay lottery winnings to its customers was not sufficiently documented. The Department could not determine where that money came from and Hoosier Lottery did not provide a statement to show Taxpayer's gross sales less lottery payouts. Once the sales were adjusted for net lottery sales, the Department subtracted certain propane and exempt sales. The resulting revenue was higher than reported revenue, thus an adjustment was made. At the time of the audit the Department noted that Taxpayer wanted to reduce this adjustment to account for Electronic Benefit Sales, but failed to provide documentation to support its assertion that all Electronic Benefit Sales were purchases of otherwise taxable items.

In protest, Taxpayer purported to provide additional documentation, however, the Department's auditor reviewed this documentation and stated that all of it was reviewed during the audit. Taxpayer also provided all of the receipts for two randomly selected months to prove that their monthly Z-tape reports were correct, however, the adjustments made were based on the monthly Z-tape reports; no support was necessary as the monthly reports were used as the starting number.

In this case, Taxpayer has not provided sufficient documentation in support of its protest of the assessments for 2016 and 2017. Taxpayer has not presented a sufficiently developed argument for the Department to address. *See Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9, (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (*citing Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)). Therefore, Taxpayer has failed to meet the requirement of proving the proposed assessments wrong, as provided by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

July 20, 2020

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