

**Letter of Findings Number: 05-20191435
Cigarette Tax****For the Tax Periods January 1, 2017 through December 31, 2018**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Taxpayer failed to support its claimed accounting errors with evidence showing its purchases and sales.

ISSUE**I. Other Tobacco Products Tax - Imposition.**

Authority: IC § 6-7-1-2; IC § 6-7-1-6; IC § 6-7-1-12; IC § 6-7-1-14; IC § 6-7-1-17; IC § 6-7-1-19; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012).

Taxpayer protests the imposition of the Cigarette Tax on its purchases.

STATEMENT OF FACTS

Taxpayer is an Indiana company which purchased and distributed cigarettes in Indiana. The Indiana Department of Revenue ("Department") performed an audit and determined that Taxpayer failed to remit the correct amount of tax on cigarettes purchased in April 2017, October 2017, February 2018, and July 2018. As a result, the Department assessed Taxpayer additional cigarette tax, interest, and penalty. Taxpayer protested the proposed assessment and an administrative hearing was conducted. This Letter of Findings results. Additional information will be provided as necessary.

I. Other Tobacco Products Tax - Imposition.**DISCUSSION**

The Department determined that Taxpayer failed to remit sufficient tax on cigarettes. Taxpayer claims that these additional taxes were not owed and were assessed as the result of accounting errors.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012).

Indiana taxes each individual cigarette sold in the state. IC § 6-7-1-12. The term "cigarette" is defined in IC § 6-7-1-2, which states:

Unless the context requires otherwise, "cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition in this section shall not be construed to include cigars. Excepting where context clearly shows that cigarettes alone are intended, the term "cigarettes" shall mean and include cigarettes upon which a tax is imposed by sections 12 and 13 of this chapter.

Distributors of cigarettes in Indiana act as agents of the state to collect the cigarette tax from their sales. IC § 6-7-1-17. The term "distributor" is defined in IC § 6-7-1-6, as follows:

Unless the context requires otherwise, "distributor" shall mean and include every person who sells, barter, exchanges, or distributes cigarettes in the state of Indiana to retail dealers for the purpose of resale, or who purchases cigarettes directly from a manufacturer of cigarettes, or who purchases for resale cigarettes directly from a manufacturer of cigarettes, or from a wholesaler, jobber, or distributor outside of the state of Indiana who is not a distributor holding a registration certificate issued under this chapter.

Distributors are responsible for affixing stamps to packages of cigarettes as evidence that taxes have been paid on those packages. IC § 6-7-1-14. If cigarettes are not correctly stamped, distributors may be liable for tax upon them. IC § 6-7-1-17. If the Department reasonably believes that a distributor has not reported the proper amount of tax due, the Department shall make a proposed assessment of the amount of the unpaid tax based on the best information available. IC § 6-8.1-5-1(b).

IC § 6-8.1-5-4 requires all taxpayers to keep records so that the Department can determine the amount of a person's liability, but cigarette distributors have an additional statutory record keeping duty. IC § 6-7-1-19 states, in part:

Every distributor of cigarettes shall keep and preserve for three (3) years records and invoices, showing the purchase and sale of all cigarettes. Such distributors shall also keep separate invoices, and records of stamps purchased. All the aforementioned records, invoices, and stocks of cigarettes and unused stamps on hand shall be open to inspection by the department at all reasonable times.

In this case, Taxpayer asserted that the Department assessed tax in excess of the cigarette purchases and explained this in two ways. First, Taxpayer claims that the Department assessed tax on cigarettes which were unstamped at the end of one month, but that were later stamped and had taxes paid in a future month. Second, Taxpayer states that its records incorrectly attributed some stamped and unstamped cigarettes to other brands, which led to a miscount.

Taxpayer created amended CT-19 returns to demonstrate its claimed tax liability but did not provide supporting documentation at the hearing. Taxpayer was given time after the hearing to provide the purchase and sales invoices for one of the contested months but failed to provide this information.

The Department reviewed sales and purchase documents during its audit of Taxpayer, and issued proposed assessments based on that audit. Without any new supporting documentation to show differing sales and purchase numbers in the contested months, Taxpayer is unable to overcome the *prima facie* case against it. Taxpayer failed to meet the burden demonstrating the Department's proposed assessments are wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

August 24, 2020

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