

Letter of Findings: 10-20231123
Food & Beverage Tax
For Tax Years 2016 to 2021

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual, acting on behalf of local boating club and marina, established the Department erred in assessing food and beverage tax and that Individual was entitled to a refund of tax, penalties, interest, and collection costs attributable to the original assessment.

ISSUE

I. Vanderburgh County Food and Beverage Tax - Proposed Assessments.

Authority: IC § 6-8.1-5-1; IC § 6-9-12-3; IC § 6-9-12-7; IC § 6-9-20-3; *Indiana Dept. 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 protests the Department's imposition of food and beverage tax based on the Department's review of its sales tax returns.

STATEMENT OF FACTS

Taxpayer is the former operator of a local boating club. The Indiana Department of Revenue ("Department") conducted a compliance review of Taxpayer's boating club. The review was based on an examination and consideration of the club's sales tax returns. The Department concluded that Taxpayer and the club owed approximately \$1,200 in food and beverage tax along with approximately \$120 in penalties, approximately \$120 in accumulated interest charges, and approximately \$100 in charges which the Department categorized as "other."

Taxpayer disagreed with the Department's assessments and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer - as the individual speaking on behalf of himself and the club - explained the basis for the protest. This Letter of Findings results.

I. Vanderburgh Food and Beverage Tax - Proposed Assessments.

DISCUSSION

Taxpayer operates (or operated) a local marina and boating club located in Indiana. Publicly available information indicates that the marina provides its member-customers docking spaces, motor fuel, water hookups, electrical hookups, "social areas," and local transportation services. For convenience's sake - in addressing the former owner and the boating club's protest - this decision will simply refer to "Taxpayer."

As with any assessment of Indiana listed taxes, it is Taxpayer's responsibility to establish that the proposed assessments of tax, interest, and penalty are incorrect. As stated in IC § 6-8.1-5-1(c) and Indiana case law, "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid, including during an action appealed to the tax court under this chapter. 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).

Food and beverage tax is imposed on the sale of prepared meals and beverages in the county in which Taxpayer's marina is located. IC § 6-9-12-3. Food and beverage tax is imposed in the same manner as sales tax

under IC § 6-9-12-7. Any sale of food and beverages that is exempt from the state gross retail tax is also exempt from the food and beverage tax. *Id.*

As explained, Taxpayer's marina is in one of the Indiana counties which chose to implement a local food and beverage tax as follows. The county relied on IC § 6-9-20-3 which provides in part:

- (a) The fiscal body of the county may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on those transactions described in section 4 of this chapter.
- (b) If a fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.
- (c) If a fiscal body adopts an ordinance under subsection (a), the county food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

The Department prepared the food and beverage assessment based upon authority contained within IC § 6-8.1-5-1(a) which states that, "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." See also [45 IAC 15-5-1](#). The Department relied on "information that you were selling food and beverage subject to food and beverage in a jurisdiction where such tax is imposed." In addition, the Department relied on the sales tax returns the marina filed during the years at issue.

Taxpayer presented information and documentation intended to buttress its claim that the assessment was "wrong." For example, Taxpayer provided a letter from the Vanderburgh County Health Department indicating that the county authority "did not have any records on file for food [or] inspection/permitting records. . . ." Taxpayer also provided an attestation signed by eighteen of its marina member/customers asserting that Taxpayer "has not sold food or beverage for the last 7 years."

Taxpayer's former owner/operator explained that the marina had been sold to another party approximately one year prior to the assessment and that if there were to be a proposed assessment, it should have issued to the current marina owners.

Finally, the Department conducted a secondary on-site visit to the facility after Taxpayer submitted this protest. During that visit, the Department found nothing to indicate that either the marina or the former/owner were selling food and beverages subject to the local tax.

The Department agrees that Taxpayer has presented sufficient information to establish the Department's assessment was wrong as called for under IC § 6-8.1-5-1(c).

The Department takes note of the fact that the former owner/operator paid the original assessment based upon actions taken by the Department to collect the liability. Given the results of this administrative review, Taxpayer (the former owner/operator) is entitled to a refund of these amounts.

FINDING

Taxpayer's protest is sustained.

March 15, 2023

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