

Letter of Findings: 04-20221151
Sales and Use Tax
For the Years 2005 and 2006

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Company established that the Department incorrectly issued new proposed assessments; this did not impact any previously issued proposed assessments that are at the warrant stage.

ISSUE

I. Sales Tax - Duplicative Notices of Proposed Assessments.

Authority: [IC 6-8.1-5-1](#); [IC 6-8.1-5-2](#); *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*, 897 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests that the Department incorrectly issued new assessments on old liabilities and protested all periods of assessments.

STATEMENT OF FACTS

Taxpayer's attorney filed a "Protest Submission Form" indicating that Taxpayer was protesting "Sales/Use" tax and requesting a "Final determination without a hearing." In so doing, as the Protest Submission Form notes, Taxpayer was forgoing an administrative hearing and asking, "the Department to make its decision based on the written protest and documentation (if any) the taxpayer presents along with the protest, and waives the right to a hearing."

Taxpayer's submitted protest consisted of the following: (1) a letter from Taxpayer's attorney; (2) copies of the Department's "Notice of Proposed Assessment" issued on January 4, 2022, but covering the time periods of 2005 and 2006; and (3) the Department's Power of Attorney (POA-1) form.

I. Sales Tax - Duplicative Notices of Proposed Assessments.

DISCUSSION

Taxpayer was a business that, according to the Indiana Secretary of State's website, went inactive in 2008 and has been administratively dissolved. On January 4, 2022, the Department issued to Taxpayer several Notices of Proposed Assessments regarding sales tax for filing periods in 2005 and 2006. As noted above, Taxpayer filed a protest regarding the proposed assessments issued on January 4, 2022.

As a threshold issue, it is a taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in [IC 6-8.1-5-1\(c\)](#), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment'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).

Taxpayer's protest letter states that the company has been out of business since 2006 and was "administratively dissolved" in 2008. Taxpayer states (**emphasis added**):

The Corporation protests the assessment of sales tax liabilities for any and all periods, including tax periods ending 6/30/2005, 7/31/2005, 10/31/2005, 1/31/2006, 2/28/2006, 3/31/2006, 5/31/2006, 6/30/2006, 7/31/2006, 8/31/2006, 9/20/2006, 10/31/2006, and 12/31/2006. **Attached are copies of the Notices of Proposed Assessments that the Corporation is protesting. The reason for the protest is that all such sales tax liabilities were assessed by the Department and had reached the collection and tax warrant stage on or before 5/15/2007.** The Department has no authority under IND. CODE § 6-8.1-5-1 *et seq.* or any other applicable law to make additional proposed assessments of these sales tax liabilities. Even if the Department had such authority, these proposed assessments would be untimely under IND. CODE § 6-8.1-5-2 because it is believed the returns for these tax periods were filed in 2008.

Thus, Taxpayer's argument seems to be that the Notices of Proposed Assessment issued by the Department on January 4, 2022, are duplicative of a prior staging of the very same taxes owed (the prior taxes have reached the tax warrant stage). The Department's decision herein is only regarding the specified protested items (i.e., the attached Notices of Proposed Assessments issued on January 4, 2022). The Notices of Proposed Assessments issued on January 4, 2022, have the following "Filing Period" dates and Letter Identification numbers:

6/30/2005 (L0002362132); 7/31/2005 (L0002296089); 10/31/2005 (L0002294869);
1/31/2006 (L000261130); 2/28/2006 (L0002388216); 3/31/2006 (L0002320826);
5/31/2006 (L0002391782); 6/30/2006 (L0002402680); 7/31/2006 (L0002344097);
8/31/2006 (L0002418040); 9/30/2006 (L0002365628); 10/31/2006 (L0002387716);
12/31/2006 (L0002374392).

[IC 6-8.1-5-2](#) states in pertinent part:

(a) Except as otherwise provided in this section and section 2.5 of this chapter, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or the following:

(1) The due date of the return.

(2) In the case of a return filed for the state gross retail or use tax, the gasoline use tax, the gasoline tax (including the inventory tax), the special fuel tax (including the inventory tax), the motor carrier fuel tax (including the inventory tax), the oil inspection fee, the cigarette tax, the tobacco products tax, any county innkeeper's taxes imposed under [IC 6-9](#), any food and beverage taxes imposed under [IC 6-9](#), any county or local admissions taxes imposed under [IC 6-9](#), or the petroleum severance tax, the end of the calendar year which contains the taxable period for which the return is filed.

(3) In the case of the use tax, three (3) years from the end of the calendar year in which the first taxable use, other than an incidental nonexempt use, of the property occurred.

Taxpayer states that the "sales tax liabilities were assessed by the Department and had reached the collection and tax warrant stage on or before 5/15/2007." Thus, the Department was precluded by [IC 6-8.1-5-2](#) from issuing the January 4, 2022, Notices of Proposed Assessments.

Turning to Taxpayer's use of the phrase "any and all periods" being protested, the Department notes the following: this written ruling does not address, nor does it impact, any tax warrants previously filed by the Department that overlap in time periods and tax type (i.e., Indiana sales tax owed for 2005-2006) with the erroneously issued January 4, 2022, Notices of Proposed Assessments. Under [IC 6-8.1-5-1](#)(d) Taxpayer had sixty (60) days to file its written protest of the January 4, 2022, Notices of Proposed Assessment. Taxpayer did not gain the ability in 2022 to protest the previously issued tax warrants.

FINDING

Taxpayer's protest is sustained regarding the issue of the January 4, 2022, Notices of Proposed Assessments being issued in error. This written ruling otherwise does not address nor does it impact any other issues that Taxpayer may have.

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