

Letter of Findings: 03-20200437; 04-20200436
Sales and Withholding Tax
For the Years 2016, 2017, and 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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Taxpayer did not provide sufficient documentation to show that the Department's assessments were incorrect. The Department was correct in its audit assessments.

ISSUE

I. Sales Tax - Taxable and Non-Taxable Sales.

Authority: [IC 6-8.1-5-4](#) [IC 6-8.1-5-1](#); *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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Taxpayer protests the adjustment of sales tax.

II. Withholding Tax - Employee Wages.

Authority: [IC 6-3-4-8](#); [IC 6-8.1-5-1](#).

Taxpayer protests the adjustment of withholding tax.

STATEMENT OF FACTS

Taxpayer is a retail merchant that operates a convenience store in Indiana. Taxpayer is registered with the Indiana Department of Revenue ("Department") as both a retail merchant and a withholding agent. Taxpayer was audited for tax years 2016, 2017, and 2018. Three audits conducted simultaneously reviewed income, sales, and withholding tax. The Department requested documentation regarding Taxpayer's sales and withholding tax. Taxpayer did not provide the requested documentation. The Department therefore conducted its audit and issued assessments based on the "best information available." The assessments determined what Taxpayer owed in sales tax for the tax years 2016, 2017, and 2018; and what Taxpayer owed in withholding tax for the tax years 2017 and 2018. The Department issued an assessment for income tax for 2016-2018.

Taxpayer does not protest the assessment regarding income tax. Taxpayer only protests the adjustments for sales and withholding tax for tax years 2016, 2017, and 2018. Taxpayer requested an administrative hearing. This Letter of Findings results. Additional facts will be provided as necessary.

I. Sales Tax - Taxable and Non-Taxable Sales.

DISCUSSION

The Department determined that Taxpayer owed additional sales tax during an audit of the 2016, 2017, and 2018 tax years. Taxpayer states in its protest letter that "the audit was conducted on an estimate of sales which led to overinflated sales, income and withholding figures." In support of its protest, Taxpayer submitted bank statements but not actual sales documents.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. [IC 6-8.1-5-](#)

(c). The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; See e.g., *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). An assessment, including Taxpayer's penalty assessment, is therefore presumed valid. A taxpayer must provide documentation explaining and supporting that the Department's position is wrong. Additionally, "[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).

Under [IC 6-8.1-5-4\(a\)](#), "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."

Taxpayer provided bank statements to the Department. However, those bank statements did not provide any documentation outside of general banking transactions. Bank statements do not provide the information needed to show Taxpayer correctly collected and/or remitted sales tax. Neither do those statements establish which of Taxpayer's sales were of taxable items or of tax-exempt items. If the Department reasonably believes a person has not reported the proper amount of tax due, the Department shall make a proposed assessment based on the "best information available." [IC 6-8.1-5-1\(b\)](#). Because Taxpayer did not provide any documentation showing specific amounts of sales tax collected and/or remitted, the Department's assessment using the "best information available" method was correct.

FINDING

Taxpayer's protest is denied.

II. Withholding Tax - Employee Wages.

DISCUSSION

The Department determined that Taxpayer owed additional withholding tax based on an audit of the 2017 and 2018 tax years. Taxpayer states in its protest letter that "the audit was conducted on an estimate of sales which led to overinflated sales, income and withholding figures." The adjustments made in the assessment were because Taxpayer increased its employees' salaries. The increased amounts of the wages are subject to additional or "corrected" withholding amounts to be collected/remitted by Taxpayer.

Under [IC 6-3-4-8\(a\)](#), any employer "making payments of wages subject to tax under [Art. 6-3] . . . is required. . . to withhold, collect, and pay over income tax on wages paid. . . [and] deduct and retain therefrom the amount prescribed in withholding instructions issued by the department." Generally, an employer shall pay withholding taxes monthly; however, if the average monthly amount of withholding taxes for the previous calendar year does not exceed \$1,000, the employer may pay the tax by calendar year instead of monthly filings. [IC 6-3-4-8\(b\)](#).

As stated above, if the Department reasonably believes a person has not reported the proper amount of tax due, the Department shall make a proposed assessment based on the "best information available." [IC 6-8.1-5-1\(b\)](#).

Taxpayer relied on the same bank statements mentioned in Issue I above. The bank statements do not provide the information needed to show Taxpayer collected and/or remitted withholding tax. Neither do the bank statements establish employee hours or wages. Again, Taxpayer did not provide any additional documentation providing information showing Taxpayer collected and/or remitted the proper amount of withholding tax. The Department correctly issued the assessments based on the "best information available" as provided under [IC 6-8.1-5-1\(b\)](#). due to the lack of documentation provided. Taxpayer has not met its burden of providing the proposed assessments wrong, as required by [IC 6-8.1-5-1\(c\)](#).

FINDING

Taxpayer's protest is denied.

SUMMARY

Taxpayer is denied on Issue I regarding the imposition of sales and use tax. Taxpayer is denied on Issue II

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