

**Supplemental Letter of Findings: 04-20221574
Sales Tax for the 2019 and 2020 Tax Years**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

After a rehearing, Business provided sufficient documentation to establish that they are entitled to receive a refund for sales tax, penalties, and interest paid following an audit of the 2019 and 2020 tax years.

ISSUE**I. Sales Tax - Tax Liability Adjustment.**

Authority: [IC 6-8.1-5-1](#); *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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, Ind. 2014); [45 IAC 2.2-6-8](#).

Taxpayer protests the imposition of sales tax.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") performed an audit of Taxpayer's 2019 and 2020 sales tax. As a result of the audit, the Department issued proposed assessments for additional sales tax, penalties, and interest.

Taxpayer protested the proposed assessments. When the Department scheduled a hearing, Taxpayer requested a different date to hold the hearing. Taxpayer sent the request to a different section of the Department and not to the Hearing Officer assigned to Taxpayer's protest. Thus, the Hearing Officer was unaware of the request and when Taxpayer did not attend the originally scheduled hearing, the Department concluded that Taxpayer opted not to participate in the hearing process and closed the protest file as provided by statute. Taxpayer requested and was granted a rehearing. This Supplemental Letter of Findings results. Further facts will be supplied as necessary.

I. Sales Tax - Tax Liability Adjustment.**DISCUSSION**

Taxpayer protests the imposition of additional sales tax, penalties, and interest paid following an audit of Taxpayer's 2019 and 2020 gross retail income. Taxpayer argues the perceived discrepancy was incorrect because the 1099-Ks filed with its federal returns did not account for refunds issued on credit card payments. Taxpayer provided an income and expense summary with updated figures accounting for the credit card refunds issued in tax years 2019 and 2020.

[IC 6-8.1-5-1\(c\)](#) states that "[t]he 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). 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 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).

According to [45 IAC 2.2-6-8](#):

(a) In determining the retail merchant's tax liability for a particular reporting period, the retail merchant shall multiply the retail merchant's total gross retail income from taxable transactions made during the reporting period except as otherwise provided in [IC 6-2.5-5-7](#) or in this chapter of Regulations, by the sales tax rate.

(b) The amount determined under this Regulation is the retail merchant's state gross retail and use tax liability regardless of the amount of tax he actually collects.

Taxpayer argues that the Department's adjustments for tax years 2019 and 2020 are incorrect. These adjustments are based on a discrepancy between Taxpayer's gross receipts reported on federal Form 1120S and total sales reported on Indiana ST-103s. During Taxpayer's internal investigation, Taxpayer concluded that their ST-103s were correct. The ST-103 figures are generated directly from corporate booking software under company policy. However, Taxpayer argues that the 1099-Ks from Taxpayer's credit card processing companies did not include refunds Taxpayer had issued via credit card during the tax years in question. The 1099-Ks only accounted for the total charges and did not subtract refunds issued. This resulted in the discrepancy found at the time of the assessment. Taxpayer claims the only way to obtain this number is to perform a review of each credit card statement individually.

At the hearing, the Department randomly selected multiple months from the tax period and asked Taxpayer to provide documentation for those months, showing how these credit card refunds affected the tax liability. Shortly thereafter, Taxpayer provided original guest receipts, corrected guest receipts showing credit card refunds, and records from Taxpayer's payment transaction software showing monies refunded from its account.

Analysis of Taxpayer's supporting documentation shows that Taxpayer's ST-103s align with its claimed sales when accounting for the credit card refunds. Because Taxpayer has shown that it remitted the correct amount of sales tax for the years at issue, the proposed assessment will be rescinded.

FINDING

Taxpayer's protest is sustained.

August 23, 2023

Finding Replaces: New

Posted: 11/01/2023 by Legislative Services Agency
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