

**Letter of Findings: 04-20221721
Sales and Use Tax
For the Tax Years 2019 and 2020**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Business failed to document that it correctly reported its taxable and exempt sales. As such, Business was responsible for additional sales tax.

ISSUE

I. Sales and Use Tax - Imposition.

Authority: [IC 6-2.5-1-2](#); [IC 6-2.5-1-5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-4-1](#); [IC 6-8.1-5-1](#); [IC 6-8.1-5-4](#); [IC 6-2.5-9-3](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 2.2-8-12](#).

Taxpayer protests the sales tax assessment concerning additional sales of tangible property.

STATEMENT OF FACTS

Taxpayer is an Indiana limited liability company which provides acupuncture, massage, health consultations, and evaluations. Taxpayer also sells tangible personal property including herbs, balms, and shampoos.

Taxpayer elected to be taxed as an S-Corporation and files Indiana S-Corporate Income Tax returns. Taxpayer's income flows through to its sole shareholder ("Shareholder"), who in turn files Indiana income tax returns, reporting the flow-through income on his Indiana individual income tax returns.

In 2022, the Indiana Department of Revenue ("Department") audited Taxpayer's tax returns and business records. The Department's audit found that Taxpayer underreported its taxable sales. In addition, the audit found that Taxpayer purchased various tangible property, such as acupuncture supplies, office supplies, and a microcurrent machine, and used these to conduct its business without paying sales tax or use tax. Taxpayer was assessed additional sales tax and use tax, penalty, and interest as a result. Ultimately, the additional sales also resulted in additional income to Taxpayer, which, in turn, passed through to its Shareholder. As such, the Department assessed Shareholder additional income tax.

Taxpayer and Shareholder protested the sales tax assessment only and did not dispute the use tax assessment. A hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the sales tax assessment. Letter of Findings 01-20221722 (January 2024) addresses Shareholder's protest of his income tax assessment.

I. Sales and Use Tax - Imposition.

DISCUSSION

Pursuant to the audit, the Department determined that Taxpayer underreported its taxable sales. The audit found that Taxpayer's records showed various discrepancies "when a comparison was completed between the Total Sales per tax return 1120s and the Total Sales per tax return ST-103[.]" The audit assessed additional sales tax as a result.

Taxpayer protested and stated, in relevant part, the following:

I am not disputing the Items that were purchased out of state and on the internet for clinic supplies that Sale & Use Tax was not paid for 2019 in the amount of \$10,535.17 and 2020 in the amount of \$2,593.00.

[What] I am disputing is the 2019 amount of \$48,100 and 2020 amount of \$16,606 increase in Total Taxable Sales. . . .

Therefore, the issue is whether Taxpayer provided sufficiently verifiable documentation to substantiate that it was not responsible for the additional sales tax.

A. The Law.

[IC 6-8.1-5-4](#)(a) requires that "[e]very person subject to a listed tax must keep books and records so that the [D]epartment can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records [] include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks." The person also "must allow inspection of the books and records and returns by the [D]epartment or its authorized agents at all reasonable times." [IC 6-8.1-5-4](#)(c).

When the person subject to the listed tax fails to keep books and records, under [IC 6-8.1-5-1](#)(b), the Department "shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment," if the Department "reasonably believes that a person has not reported the proper amount of tax due." All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. [IC 6-8.1-5-1](#)(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). The taxpayer is required to provide documentation explaining and supporting its challenge that the assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1](#)(a). A "[r]etail transaction" is "a transaction of a retail merchant that constitutes selling at retail as described in IC [§] 6-2.5-4-1 [or] . . . in any other section of [IC 6-2.5-4](#)." [IC 6-2.5-1-2](#)(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." [IC 6-2.5-4-1](#)(b). "Gross retail income" generally is "the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold[,] . . . whether received in money or otherwise, without any deduction for: (1) the seller's cost of the property sold[.]" [IC 6-2.5-1-5](#)(a).

[IC 6-2.5-2-1](#)(b) also provides that "The person who acquires property in a retail transaction is liable for the tax on the transaction and [] shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." If the retail merchant fails to collect the sales tax, the retail merchant "is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." [IC 6-2.5-9-3](#); [45 IAC 2.2-8-12](#). If the purchasers assert that the retail transactions are exempt from the sales tax, the retail merchant is required to obtain properly executed exemption certificates. [45 IAC 2.2-8-12](#)(f). Further, the retail merchant must maintain proper records to substantiate sales of interstate commerce. [45 IAC 2.2-8-12](#)(e).

B. The Audit.

The Department audited Taxpayer's records and determined that Taxpayer underreported its taxable sales. The audit report noted, in part, the following:

The review of the sales invoices that were provided showed that sales tax was being charged and remitted appropriately on these invoices. However, when a comparison was completed between the Total Sales per tax return 1120s and the Total Sales per tax return ST-103 a difference was revealed for both 2019 and 2020.

. . . .

[T]axpayer explained that the differences between the sales on the 1120S and ST-103 were a combination of service fees and "wholesale sales" which were primarily shipped out of state. Auditor requested properly completed Form ST-105 General Sales Tax Exemption Certificate or shipping details showing that the items were shipped outside of Indiana. The taxpayer was unable to provide either of the requested documents for the wholesale sales.

The auditor determined additional total/taxable sales by scheduling the total product sales from the transaction report and subtracting the taxable sales reported on the ST-103.

The audit concluded that Taxpayer failed to correctly report its taxable sales, had additional taxable sales, and assessed sales tax on the additional sales as a result.

C. Taxpayer's Protest.

Taxpayer protested the audit adjustments concerning additional taxable sales. Taxpayer stated, in relevant part:

When a client/patient would purchase, herbs or other products that are sold retail, while the person was at the physical location in [Indiana]. The transaction ran through the [point-of-sale (POS)] system and sales tax was collected and reported and paid each month [through] the [INTIME] portal. What was not tracked on the POS system were products that were purchased wholesale through the [] Wholesale website that is only accessible to wholesale customers, the majority located out of state. There were only 3 wholesale customers with addresses in Indiana. Those Indiana customers had an ST-105 on file and were given to the Auditor. . . . As for the reason Total Sales, Exempt Sale[s] and Taxable Sales that were reported on the [INTIME] portal do not match the 1120S tax return[,] there was income from the [government agency] for services preformed[,] and those payments were received via direct deposit to the bank. . . .

Taxpayer seemingly argued that the audit erred in assessing additional sales tax because (1) its sales of tangible personal property to out-of-state wholesalers were not subject to Indiana sales tax and (2) the payments it received from the government agency for services preformed were not taxable sales. To support its protest, Taxpayer offered a list of addresses and its email exchange with the government agency in addition to its "Profit & Loss" Statement, and "Transaction Detail By Account."

D. Analysis and Conclusion.

Taxpayer is a retail merchant selling tangible personal property in Indiana. Taxpayer thus was required to collect the Indiana sales tax on these sales as "a separate added amount to the consideration in the transaction." [IC 6-2.5-2-1](#). Taxpayer, as a seller and agent for the state, must collect sales tax based on "the total amount of consideration . . . for which tangible personal property is sold [] without any deduction for the seller's cost of the property sold[.]" [IC 6-2.5-1-5\(a\)](#).

During the audit, the Department requested that Taxpayer provide additional documentation to address discrepancies found among Taxpayer's tax returns and business records. Taxpayer failed to timely provide the verifiable documents requested to substantiate that it properly collected and remitted the sales tax. The audit provided step-by-step calculations based on the best information available during the audit. The method was reasonable. As such, the results bear a "rebuttable presumption" in which the calculations are presumed to be correct unless proven otherwise.

Throughout the protest process, referencing its supporting documents, Taxpayer seemingly argued that the audit erred in assessing additional sales tax because (1) its sales of tangible personal property to out-of-state wholesalers were not subject to Indiana sales tax and (2) the payments it received from the government agency for services preformed were not taxable sales.

Upon review, however, Taxpayer's reliance of its supporting documents is misplaced. Taxpayer first asserted that it was not responsible for additional tax because the products were sold to out-of-state wholesalers. Taxpayer's list of addresses, however, failed to substantiate that it sold tangible property to out-of-state wholesalers. In particular, Taxpayer's list simply provided out-of-state addresses without corresponding transaction details, such as who were the purchasers, whether the purchasers were qualified wholesalers, what products were sold, and how much was charged for these sales. Taxpayer's business records were not provided to corroborate its claim. As such, the Department is not able to verify the out-of-state sales.

Additionally, Taxpayer claimed that (i) it did not sell products to the government agency and (ii) it only provided services to the government agency and received payments from the government agency for services it performed. Taxpayer's document, however, contained questions to the agency and the agency simply stated that they only confirmed that "the vendor is inactivated in the vendor file." As such, the Department is not able to agree that Taxpayer met its burden of proof that the payments from the government agency were not taxable sales.

To conclude, the Department is not able to verify the information Taxpayer provided. Given the totality of the circumstances and the absence of other verifiable supporting documents, the Department is not able to agree that Taxpayer met its burden of proof, as required under [IC 6-8.1-5-1](#)(c), demonstrating that the audit assessment was incorrect.

FINDING

Taxpayer's protest is denied.

January 12, 2024

Replaces Finding Document at: New

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An [html](#) version of this document.