

Letter of Findings: 10-20210086
Food and Beverage Tax
For the Years 2020 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department was unable to agree with Indiana Restaurant that it had provided information or explanation sufficient to justify abating the proposed assessment of food and beverage tax.

ISSUE

I. Food and Beverage Tax - Proposed Assessment.

Authority: IC § 6-8.1-5-1; IC § 6-9-20-5; IC § 6-9-51-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Fell v. West*, 73 N.E. 719 (Ind. App. 1905); Greenwood Food and Beverage Tax, <https://www.greenwood.in.gov/topic/blocks.php?topicid=399&structureid=156>.

Taxpayer asks the Department to abate an assessment of food and beverage tax on the grounds that it was unaware it was responsible for collecting and remitting that tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state company which operates an Indiana restaurant. After reviewing the Indiana restaurant's sales tax returns, the Indiana Department of Revenue (Department) found that the restaurant had not remitted food and beverage (F&B) tax. The Department issued Taxpayer a proposed assessment of approximately \$9,000. Taxpayer protested, an administrative hearing was conducted by telephone, Taxpayer's representatives explained the basis for the protest during that hearing, and this Letter of Findings results.

I. Food and Beverage Tax - Proposed Assessment.

DISCUSSION

The issue is whether Taxpayer has provided evidence and explanation sufficient for the Department to abate the assessment of F&B tax.

The proposed assessment of F&B tax constitutes prima facie evidence that the Department's claim for the unpaid tax is valid, and each 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); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position 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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

IC § 6-9-20-5 permitted the city of Greenwood to require local vendors to collect a food and beverage tax on sales of food and/or beverages within that city. Greenwood imposed that tax March 1, 2020, under the authority of IC § 6-9-51-1. As explained by the Greenwood authorities:

Effective March 1, 2020, businesses that furnish, prepare, or serve any food and/or beverages within

Greenwood are required to implement a 1[percent] food and beverage (FAB) tax. First payment of the tax at the end of April, 2020. Greenwood FAB tax is paid through the State of Indiana. FAB taxpayers must first register for the tax through the INBiz website maintained by the Indiana Secretary of State. Payment must be made through the INtax website, which is maintained by the Indiana Department of Revenue. Taxpayers will not be able to pay until they are first registered for the tax. Greenwood Food and Beverage Tax. <https://www.greenwood.in.gov/topic/blocks.php?topicid=399&structureid=156> (Last visited September 22, 2021).

For clarity's sake, the Department notes here that Greenwood vendors collect both a Johnson County F&B tax and the Greenwood F&B tax - effectively a two percent tax rate.

Taxpayer failed to register with the Department and the Department assessed the tax as required under IC § 6-8.1-5-1(a). The statute requires 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](#) (*Emphasis added*).

In this case, the Department did exactly what it was required to do; it correctly and "reasonably believed" that Taxpayer did not remit Greenwood's F&B tax and - since the Department knew the amount of sales tax remitted - was able to issue that assessment based on "the best information available."

Taxpayer argues that the assessment should be abated because it was unaware that Greenwood had imposed a F&B tax. However, Taxpayer's error was not insignificant because even though the tax was effective March 1, 2020, Taxpayer did not register for the tax until May 21, 2021, some fourteen months later.

There is no indication that Taxpayer attempted to avoid its tax responsibility, but the Department bears in mind its own responsibility to collect the tax on behalf of Greenwood residents and of upholding the long-held principle that "[t]he statutes of this state relating to the assessment and collection of taxes are liberally construed in favor of the taxing powers." *Fell v. West*, 73 N.E. 719, 722 (Ind. App. 1905).

Taxpayer has failed to meet its statutory burden under IC § 6-8.1-5-1(c) of clearly establishing that the assessment was "wrong."

FINDING

Taxpayer's protest is respectfully denied.

September 27, 2021

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