

Note: The appeal period has expired, pursuant to Iowa Admin. Code rule 701-7.19(8)(d) the Administrative Law Judge's proposed decision is adopted as the final decision by the Department.

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

IN THE MATTER OF

DIA Nos. 22IDRSCUT0002, 0003

IDR Nos. 2014-300-1-0250, 0249

PARK VIEW INN & SUITES
OF WEST BEND, LLC

4130 Highway 21
Brooklyn, Iowa 52211

PROPOSED DECISION

Retail Sales Tax.

STATEMENT OF THE CASE

Park View Inn & Suites, LLC (the taxpayer) filed protests relating to sales tax assessments issued by the Department of Revenue (the Department) dated June 25, 2014 and July 8, 2014. The matters were consolidated for the purposes of conducting one contested case proceeding, which came on for hearing at the Wallace State Office Building on November 3, 2022. The taxpayer was represented by M. Jon Brown, CPA. Also present on behalf of the taxpayer were Dinesh Prasad and Vijay Uniyal. Assistant Attorney General Paxton Williams represented the Department. Also present on behalf of the Department was Renae Walker.

The record includes the Department's exhibits A through P, a packet of documents submitted by the taxpayer, and the testimony of Renae Walker and Vijay Uniyal.

FINDINGS OF FACT

Taxpayer is the owner of two hotels, Pleasant Stay Inn & Suites (Pleasant Stay) and Park View Inn & Suites (Park View). Pleasant Stay is a 52-room hotel located in Brooklyn, Iowa. Park View is a 35-room hotel located in West Bend, Iowa. (Appellant Exhibit Packet).

The Department conducted an audit of the taxpayer's properties beginning on or about January 2014. As part of the process, the Department's auditor reviewed the taxpayer's records of the breakdown of the room rate, tax, and additional charges for each customer, referred to as the "customer folios", the hotels' credit card summaries that were made available, and the taxpayer's QuickBooks Sales Tax Summary reports. There were some periods of time where taxpayer did not have any customer folios. In those instances, the auditor estimated the hotels' sales by calculating a daily average. The actual sales and estimated sales were then added together to calculate the total amount sales and applied the amount of sales and hotel/motel tax to those sales. (Walker Testimony; Exhibits G, I).

The Department issued a written notice to the taxpayer on June 25, 2014 that assessed \$56,784.87 in unpaid tax, penalty, and interest associated with Pleasant Stay for the 2010, 2011, 2012, and 2013 tax years. (Exhibit A; Walker Testimony).

Thereafter, the Department issued a notice to taxpayer on July 8, 2014 establishing a refund of taxes paid on behalf of Park View from July 1, 2011 through December 31, 2013 in the amount of \$14,339.00. The Department informed the taxpayer the refund amount would be applied to the liability established in its June 25, 2014 assessment relating to Pleasant Stay.¹ (Exhibit J; Walker Testimony).

The taxpayer filed a protest of the Department's decisions on August 28, 2014. In its protest, the taxpayer asserted owed \$34,528.37 for the time period subject of the assessment regarding Pleasant Stay, and that the Department owed a total of \$23,910.76 in overpaid tax regarding Park View. In short, the taxpayer asserted it owed the Department a total of \$10,617.61 in overdue tax, penalty and interest for the period subject to the audit. The taxpayer submitted records from the hotels' point of sale service in support of its protest, although acknowledged it did not have complete or accurate records for the entire time period at issue. The taxpayer also asserted the Department applied the incorrect sales tax and/or hotel tax rate when arriving at the assessed amount. (Exhibits B, K; Walker Testimony; Uniyal Testimony).

Following the protests, the parties entered into the informal appeal process. The Department cited some difficulty obtaining responses from taxpayer, although the record is not entirely clear as to why the informal process lasted through December 2021. During that time, the Department requested documents from the taxpayer to substantiate its claims made in its protest. Taxpayer acknowledged it was unable to submit full and complete copies of its sales record for the time period covered by the audit. Taxpayer asserted during the informal appeal process that its point of sale system was not accurate for a portion of the audit period. Instead, taxpayer offered records of bank deposits made during that time to show the amount of sales, but also asserted said bank records reflected additional funds not associated with hotel/motel room sales. (Walker Testimony; Uniyal Testimony; Exhibits C-H, L-N, P).

The parties were ultimately unable to resolve the matter through the informal appeals process, and the cases were transmitted to the Department of Inspections and Appeals for the purpose of conducting a contested case proceeding. On appeal, the taxpayer continued to assert the Department incorrectly estimated the amount of hotel/motel sales for the audit period. The taxpayer offered general information regarding the rural locations of its properties, news reports to show sales at the properties were uncharacteristically low during certain weather events, and prepared summaries of occupancy rates and point of sale totals. The taxpayer additionally offered a breakdown of what it believed were the taxes due and owing each year during the audit period, which claimed a total amount due of \$17,823. (Uniyal Testimony; Appellant's Exhibit Packet).

¹ The Department's authority to apply Park View's refund amount to Pleasant Stay's tax liability does not appear to be in dispute. See Iowa Code § 422.73(1) (stating an amount of tax, penalty, or interest that has been paid which was not due shall be credited against any tax due or shall be refunded to the person).

CONCLUSIONS OF LAW AND ANALYSIS

As a general rule, a taxpayer challenging the Department's tax assessment has the burden of proving the Department's decision was erroneous by a preponderance of the evidence.² The Department bears the burden of proof if the Department alleges the taxpayer engaged in fraud with intent to evade tax,³ or the Department's assessment is more than six years from the date a return is due.⁴ Given the Department issued the decisions at issue within six years of the dates the returns were due, the taxpayer bears the burden of proof in this case.

The Department's Director administers the assessment and tax laws in Iowa.⁵ The Iowa Legislature has granted the Department's Director the express authority to adopt rules "for the orderly and methodical performance" of the Director's duties.⁶

This case concerns the retail sales tax imposed upon a hotel or motel. Iowa Code chapter 423A governs hotel and motel tax in Iowa. In general, the state-imposed tax and locally imposed tax imposed by law shall be collected by the hotel/motel from the user of that lodging and shall be remitted to the Department.⁷ The hotel/motel shall add the state-imposed tax to the sales price of the lodging and the tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and from the locally imposed tax, if any.⁸ The lodging provider shall add the locally imposed tax, if any, to the sales price of the lodging and the tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and from the state-imposed tax.⁹

Every retailer is required "to keep records, receipts, invoices, and other pertinent papers as the director shall require, in the form that the director shall require, for as long as the director has the authority to examine and determine tax due."¹⁰ The Department is authorized to examine the books, papers, records, and equipment of persons selling personal property to verify the accuracy of any return made and to ascertain the amount of sales tax due.¹¹ The Department examined the sales records produced by the taxpayer for the audit period.

If a sales tax return is not filed, is incorrect, or is insufficient, the Department shall determine the amount of tax due from information as the Department may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices.¹² The determination may be made using any generally recognized valid and reliable sampling technique, whether or not the person being

² Iowa Code § 421.60(6)(c); *see also Clark v. Iowa Dept. of Rev. & Fin.*, 644 N.W.2d 310, 315 (Iowa 2002)(finding the burden is on the taxpayer challenging the tax assessment).

³ Iowa Code § 421.60(6)(a); *accord* 701 Iowa Administrative Code (IAC) 7.17(11)(a).

⁴ Iowa Code § 421.60(6)(b); *accord* 701 IAC 7.17(11)(b).

⁵ Iowa Code § 421.17.

⁶ Iowa Code § 421.14.

⁷ Iowa Code § 423A.5A(3).

⁸ *Id.*

⁹ *Id.*

¹⁰ Iowa Code § 423.41.

¹¹ *Id.*

¹² Iowa Code § 423.37(2).

audited has complete records, as mutually agreed upon by the Department and the taxpayer.¹³ The Department shall give notice of the determination to the person liable for the tax.¹⁴ The determination shall fix the tax unless the person against whom it is assessed shall, within sixty days after the giving of notice of the determination, apply to the director for a hearing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund.¹⁵ At the hearing, evidence may be offered to support the determination or to prove that it is incorrect.¹⁶

It is undisputed in this matter that taxpayer had insufficient records to determine the amount of sales tax due during the audit period. The issue in dispute is the method and accuracy in which the Department estimated the taxes due. While the taxpayer generally disputed the Department's figures used in the calculation, the taxpayer has not submitted sufficient evidence to show how it arrived at a different amount and the reliability of its method of calculation.

The burden is on the taxpayer to prove the assessment is erroneous, and not on the Department to prove its validity.¹⁷ The taxpayer has not met its burden to prove the Department's decision calculating \$56,784.87 in unpaid tax, penalty, and interest associated with Pleasant Stay for the 2010, 2011, 2012, and 2013 tax years was somehow incorrect. The taxpayer additionally failed to show the Department incorrectly calculated overpaid tax associated with Park View in the amount of \$14,339.00 from July 1, 2011 through December 31, 2013.

For these reasons, the Department's decisions must be affirmed.

NOTICE

Pursuant to 701 Iowa Administrative Code 7.19(8)(d), this order becomes the final order of the Department for purposes of judicial review or rehearing unless a party files an appeal to or review on motion of the director with 30 days of the date of this order, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Clark v. Iowa Dept. of Revenue*, 644 N.W.2d 310, 316 (Iowa 2002).

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IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'K. Dreckman', written over a horizontal line.

Kristine Dreckman, Administrative Law Judge