

**Memorandum of Decision: 04-20160550R**  
**Gross Retail Tax**  
**For the Year 2013**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of 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. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

**HOLDING**

Aircraft Maintenance Company demonstrated that it was entitled to a refund of sales tax paid to the Department after it produced a copy of its customer's properly completed exemption certificate and documented that it had paid the original tax amount on behalf of its customer.

**ISSUE**

**I. Gross Retail Tax - Refund.**

**Authority:** IC § 6-2.5-5-8(a); IC § 6-2.5-5-46.

Taxpayer argues that it has provided sufficient information justifying its claim for a refund of sales tax paid on behalf of one of its customers.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company in the business of repairing and maintaining aircraft. Taxpayer provides its services at an Indiana location. Taxpayer provided repair and maintenance services to an out-of-state customer. The repair and maintenance services were performed at the Indiana location.

Taxpayer sent an invoice to the out-of-state company. The invoice listed charges for labor, parts, "miscellaneous," services, and sales tax. The amount of the sales tax was approximately \$15,000. Taxpayer explains that it remitted the \$15,000 amount to the Indiana Department of Revenue ("Department") on its June 2013 sales tax return before it received the invoiced amount from its customer.

Subsequently the customer provided Taxpayer an Indiana "resale certificate." The customer argued that it was not required to pay Indiana sales tax.

Taxpayer submitted a form GA-110L ("Claim for Refund") asking for a return of the \$15,000. In a letter dated June 20, 2016, the Department denied the claim. The letter stated that "On April 19, 2016 the Department requested a copy of the ST-105 ["General Sales Tax Exemption Certificate"] given to you by your customer. The Department has not received a response."

Taxpayer disagreed with the decision denying the \$15,000 refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

**I. Gross Retail Tax - Refund.**

**DISCUSSION**

The issue is whether Taxpayer has provided documentation and grounds sufficient to justify that it was entitled to the \$15,000 refund.

Taxpayer explains that it did not obtain the requisite ST-105 from the customer in a timely fashion before it submitted the GA-110L and that it can now provide that exemption form.

Taxpayer has indeed provided the missing exemption form which explains that the customer believes it was entitled to claim an exemption for "aircraft repairs."

IC § 6-2.5-5-8(a) provides:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(Emphasis added).

Whether or not the customer was justified in issuing Taxpayer the exemption certificate is not at issue here. (IC § 6-2.5-5-46 exempting "materials, parts, equipment, and engines" used in furtherance of "repair, maintenance, refurbishment, remodeling, or remanufacturing of an aircraft" was not in effect until July 1, 2014).

What is at issue is whether Taxpayer obtained from its customer a properly completed ST-105 exemption certificate, whether Taxpayer has established that its customer did not pay the tax, and whether it can document that it paid the \$15,000 with its June 2013 sales tax return. Taxpayer has done all three and is now entitled to the refund requested.

Bearing in mind that the refund was denied by the Department because Taxpayer failed to produce its customer's ST-105, that it has now provided a copy of that form, and that Taxpayer has documented payment of the \$15,000, Taxpayer is now entitled to the refund.

#### **FINDING**

Taxpayer's protest is sustained.

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