

## DEPARTMENT OF STATE REVENUE

04-20170761R.MOD

**Memorandum of Decision: 04-20170761R  
Gross Retail and Use Tax  
For the Year 2012**

**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**

Indiana Company was precluded by the three-year statute of limitations from seeking a refund of use tax which it had erroneously reported to the Department when it made an internal transfer of construction equipment from one of its divisions to a second.

**ISSUE**

**I. Gross Retail and Use Tax - Statute of Limitations.**

**Authority:** IC § 6-2.5-5-8(b); IC § 6-8.1-9-1(a).

Taxpayer argues that it timely filed a request for a refund of sales/use tax paid on the internal transfer of construction equipment from one of its divisions to another.

**STATEMENT OF FACTS**

Taxpayer is an Indiana company in the business of selling and renting construction equipment.

Taxpayer filed a GA-110L ("Claim for Refund") received by the Indiana Department of Revenue ("Department") January 14, 2016. On that claim, Taxpayer sought a refund of \$8,270 of sales/use tax on the ground that Taxpayer had incorrectly self-assessed use tax on the cost of construction equipment it had transferred from one of its divisions ("Sales") to another of its divisions ("Fleet").

Taxpayer explains that its "Sales" division sells this equipment to Indiana customers and that it either "charge[s] sales tax to customers and/or collects exemption certificates for exempt sales." However, Taxpayer's "Fleet" division rents this construction equipment to Indiana customers.

On occasion, Taxpayer will transfer ownership of certain items of equipment from its "Sales" division to its "Fleet" division. Taxpayer explains that the transfer of equipment from one division to the next is "account[ed] for through an invoicing system." Taxpayer explains that "[t]his is required because each division has a separate operating and accounting system." Taxpayer states that it incorrectly self-assessed use tax on the equipment transfers because the equipment was intended either for exempt rental purposes or sold for "resale" to its customers.

The Department in a "Refund Denial" letter dated July 2016 explained that "This claim is outside the statute of limitations." Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

**I. Gross Retail and Use Tax - Statute of Limitations.**

**DISCUSSION**

The issue is whether Taxpayer's refund request was timely filed. Taxpayer regularly filed 2012 sales/use tax returns. The first 2012 return reported tax due in January 2012; that return was filed (and the tax paid) February 2012. The second 2012 return reported tax due in February 2012; that second return was due March 2012. The final 2012 return reported tax due in December 2012 and was due January 22, 2013. That final payment was made January 17, 2013.

The issue is whether, under Indiana law, Taxpayer is entitled to a refund of any portion of the use tax.

Indiana law provides an exemption from sales tax for property acquired for either resale or for rental. IC § 6-2.5-5-8(b) provides:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

Taxpayer states that its transfer of construction equipment from its "Sales" division to its "Fleet" division falls within the cited exemption because the "Fleet" division either sells or rents these materials.

However, Taxpayer is bound by the statute of limitations in its ability to obtain a refund of the self-assessed use tax. IC § 6-8.1-9-1(a) provides in relevant part as follows:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (j) and (k), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

In this case, Taxpayer's refund is barred in large part by the three-year statute of limitations because the January 14, 2016, refund claim was filed more than three years after the due date of 11 of the 12 monthly returns and more than three years after the date of payment associated with those 11 returns. There is one exception; the December 2012 return was due by January 22 and falls within the limitations period.

Taxpayer is requested to supply documentation delineating the exempt transactions associated with the December 2012 return and - accompanied by the exemption certificate - forward that information directly to the Legal Division within 90 days of the issuance of this Memorandum of Decision.

### **FINDING**

Taxpayer's protest is sustained in part and denied in part.

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