

Final Order Denying Refund Number: 04-20160486R
Sales Tax
For The 2014 Tax Year

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 Final Order Denying Refund.

HOLDING

When Indiana sales tax was collected at the time of the sale, refund of sales tax to Retail Merchant was not permitted unless Retail Merchant first refunded the sales tax to its customer, the person from whom the tax was collected. Retail Merchant's "Sales Credit Memo" alone, without additional verifiable documentation, was not sufficient to establish that Retail Merchant refunded the sales tax to its customer.

ISSUE

I. Sales Tax - Refund Claimed by Retail Merchant.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-6-13; IC § 6-2.5-6-14.1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-8.1-9-1; [45 IAC 2.2-2-1](#); [45 IAC 15-9-2](#).

Taxpayer protests the refund denial of sales tax which it collected from the purchaser at the time of the sale.

STATEMENT OF FACTS

Taxpayer is an Indiana S corporation in the business of providing refrigerated warehousing for temporary and long-term cold storage to its customers including wholesalers as well as supermarket stores.

On December 30, 2014, Taxpayer sold racking equipment ("Racking Equipment"), which had been installed and used for its cold storage business for 20 to 30 years, to its affiliate, an Indiana Limited Partnership ("Affiliate"). The Sales Invoice stated that "Sales of Racking [Equipment]" ("Sale of Racking Equipment") was \$705,000 plus \$49,350 sales tax. Taxpayer (hereinafter "Taxpayer-Seller") collected the sales tax, reported it by amending its January 2015 sales tax return and remitted the \$49,350 sales tax to the State of Indiana.

In February 2016, Taxpayer-Seller filed a Claim for Refund, GA-110L form (Claim Number 1047926), claiming that it was entitled to a refund of the \$49,350 sales tax. To support its refund claim, Taxpayer-Seller included the Sales Invoice and a General Sales Tax Exemption Certificate, ST-105 Form ("ST-105 at Issue"). The Indiana Department of Revenue ("Department") determined the ST-105 at Issue was invalid and denied the claim on May 10, 2016.

Taxpayer-Seller timely protested the refund denial. An administrative phone hearing was held during which the representatives explained the basis of Taxpayer-Seller's protest. This Final Order Denying Refund ensues and addresses Taxpayer-Seller's protest. Additional facts will be provided as necessary.

I. Sales Tax - Refund Claimed by Retail Merchant.

DISCUSSION

Taxpayer-Seller stated that it had used the Racking Equipment for 20 to 30 years in providing the cold warehousing services to its customers. Taxpayer-Seller further stated that it sold the Racking Equipment to Affiliate and "inadvertently collected and remitted sales tax on the [Sale of Racking Equipment]" Taxpayer-Seller thus claimed that it was entitled to the \$49,350 refund of sales tax "under the authority of Indiana Code 6-2.5-6-13" because "Taxpayer[-Seller] erroneously or illegally collect[ed] state gross retail or use taxes." Thus, the issue is whether Taxpayer-Seller is entitled to the refund of sales tax.

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); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that

constitutes "selling at retail." 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). A person who acquires tangible person property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." Id. "The retail merchant shall collect the tax as agent for the state." Id.

When a purchaser claims the purchase "is exempt from the state gross retail and use taxes," the purchaser "may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). The "seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail or use tax on that purchase." Id. However, the "seller that accepts an incomplete exemption certificate . . . is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains . . . a fully completed exemption certificate . . . within ninety (90) days after the sale." IC § 6-2.5-8-8(d). Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and 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.

Because the retail merchant - the agent for the state - is required to collect and remit the sales tax, a trust tax, on the retail transaction from the purchaser, the retail merchant is often tasked with customer's requests of refund when the retail merchant erroneously collects the tax. Under those circumstances, IC § 6-2.5-6-14.1 specifically explains that the **"retail merchant is not entitled to a refund of state gross retail [tax] . . . unless the retail merchant refunds those taxes to the person from whom they were collected."** (Emphasis added). In other words, when the retail merchant indeed refunds the sales tax, which it previously collected, to its customer, the retail merchant may be entitled to the refund of sales tax from the state.

Nonetheless, the purchaser who is liable for paying the tax at the time of the transaction always has the statutory right to file a refund claim with the Department pursuant to IC § 6-8.1-9-1 and [45 IAC 15-9-2](#). IC § 6-2.5-6-13 further instructs the purchaser to do so, which provides:

A person is entitled to a refund from the department if:

- (1) a retail merchant erroneously or illegally collects state gross retail or use taxes under this article from the person;
- (2) the retail merchant remits the taxes to the department;
- (3) the retail merchant does not refund the taxes to the person; and
- (4) the person properly applies for the refund under the refund provisions contained in [IC 6-8.1-9](#).

In this instance, Taxpayer-Seller, the retail merchant claimed that it was entitled to the refund of sales tax. Taxpayer-Seller initially offered the Sales Invoice and the ST-105 at Issue to support its refund claim. The Department denied the refund claim. Taxpayer-Seller protested the denial. To support its protest, Taxpayer-Seller referenced IC § 6-2.5-6-13 and submitted a \$49,350 "Sales Credit Memo," stating "Sales Tax Payable - IN Credit Sales Tax on Inv[oice] SI08652 Sale of Racking." After the phone hearing, Taxpayer-Seller presented additional supporting documentation which included, but was not limited to, a lease agreement, lease invoices, and monthly payments.

Upon review, however, Taxpayer-Seller's reliance on the above mentioned supporting documentation and IC § 6-2.5-6-13 is misplaced. First, Taxpayer-Seller, the retail merchant, was not entitled to a refund of sales tax - a trust tax - "unless the retail merchant refund[ed] those taxes to the person from whom they were collected." IC § 6-2.5-6-14.1. Thus, Taxpayer-Seller, who asked for a refund of the sales tax it collected, must first show that it refunded the sales tax to the purchaser. Taxpayer-Seller only offered the Sales Invoice and the invalid ST-105 when it initially filed the GA-110L form in February 2016. Thus, Taxpayer-Seller failed to demonstrate that it indeed refunded the purchaser when the refund claim was filed in February 2016. The refund (Claim Number 1047926) claimed by Taxpayer-Seller thus was properly denied on May 10, 2016.

Second, after the Department denied the claim, Taxpayer-Seller produced the "Sales Credit Memo" to support its protest in July 2016. This "Sales Credit Memo" further raised various questions. For example, the "Sales Credit Memo" was dated May 9, 2016, one day prior to the Department's denial letter, and was never reviewed by the Department's Enforcement Division. The "Sales Credit Memo" simply stated that Taxpayer-Seller credited \$49,350 to Affiliate. This "Sales Credit Memo" however is not a tax refund.

The Department is particularly mindful that a retail merchant, during the course of its business, regularly applies payments and credits. However, the supporting documentation showed that Taxpayer-Seller and Affiliate

engaged in more than one retail transaction, maintained various account receivables and payables. Thus, the Department is unable to accept that a "Sales Credit Memo" to the purchaser alone with nothing more was sufficient to support a sales tax refund. To verify whether the sales tax was refunded to the purchaser, additional documents, such as a canceled check, or documents which contain the details and current account balance concerning all relevant accounts must be examined together with the "Sales Credit Memo." To state it differently, the Department is not able to verify if the refund of the sales tax to the customer occurred without examining all relevant accounts, especially considering the timing and circumstances of the "Sales Credit Memo." Thus, in the absence of other verifiable supporting documents, the May 9, 2016 "Sales Credit Memo" was not sufficient to substantiate that Taxpayer-Seller refunded the sales tax - a trust tax - "to the person from whom they were collected."

In short, Taxpayer-Seller was not entitled to the refund of the sales tax - a trust tax - it collected unless it was first refunded to the purchaser. In the absence of other verifiable supporting documents, the May 9, 2016 "Sales Credit Memo" was not sufficient to substantiate that Taxpayer-Seller refunded the sales tax - a trust tax - "to the person from whom they were collected."

FINDING

Taxpayer-Seller's protest is respectfully denied.

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