DEPARTMENT OF STATE REVENUE

04-20170005R.ODR

Final Order Denying Refund: 04-20170005R
Gross Retail Tax
For the Years 2012 and 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 Final Order Denying Refund.

HOLDING

Finance Company was not entitled to obtain a refund of sales tax associated with defaulted automobile installment agreements because Finance Company was not acting as a "retail merchant" when the agreements were originated.

ISSUE

I. Gross Retail Tax - Refund.

Authority: IC § 6-2.5-6-9; IC § 6-2.5-6-9(a); IC § 6-2.5-6-9(d)(4); IC § 6-2.5-8-1(a); IC § 6-2.5-9-2; SAC Finance, Inc. v. Indiana Dept. of State Revenue, 24 N.E.3d 541 (Ind. Tax Ct. 2014); SAC Finance, Inc. v. Indiana Dept. of State Revenue, 894 N.E.2d 1116 (Ind. Tax Ct. 2009).

Taxpayer argues it is entitled to a refund of sales tax collected and paid when auto dealers sold cars.

STATEMENT OF FACTS

Taxpayer is a finance company closely associated with a "buy-here-pay-here" automobile dealership ("Dealership").

Dealership's customers buy cars from the Dealership by entering into extended, "low down-payment," financing arrangements enabling customers to acquire cars they might not be able to purchase through more traditional financing arrangements. These alternative financing agreements permit the customer to pay the cost of the car and associated expenses (such as sales tax) by means of monthly, nominal, extended payment agreements. At the time of the purchase, Dealership forwards to Indiana the entire sales tax due on the purchase. Dealership then sells the installment agreements to Taxpayer at a discount.

For example, Dealership may sell a customer a car for $20,000 and charge 7 percent sales tax ($1,400). Dealership and customer enter a payment agreement to finance the $21,400. At this point, the financing agreement is between customer and Dealership.

Dealership forwards the seven percent sales tax ($1,400) to the Department. Dealership then sells the financing agreement to Taxpayer at a discounted price. For example, Dealership may sell Taxpayer the $21,400 installment agreement for $18,000. Thereafter, Taxpayer is contractually entitled to receive the customer's monthly installment payments.

In many of these cases, the installment agreements go into default because the customer stops paying the monthly installment payments. In those instances, Taxpayer will seek to recover from Indiana the sales tax paid on the original purchase price which was originally paid by the dealer. In the example above, Taxpayer will seek a refund of the $1,400.

Taxpayer did exactly that and now seeks a refund of approximately $40,000 in sales tax paid to the Department during 2012 and 2013.

The Indiana Department of Revenue ("Department") denied Taxpayer the requested refund. In a letter dated January 2017, the Department wrote:

> The Department has reviewed the claim and hereby denies the claim in full based upon the reason(s) below.

> IC § 6-2.5-8-1 provides in part: A retail merchant engaged in business in Indiana as defined IC § 6-2.5-3-1(a). A retail merchant may not make a retail transaction in Indiana unless the retail merchant has applied for a registered retail merchant's certificate.
>
> Taxpayer did not register for sales tax with the Department until 10/2015 . . . .

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results.

I. Gross Retail Tax - Refund.

DISCUSSION

The issue is whether Taxpayer is entitled to a refund of sales tax attributable to defaulted installment agreements. In the example cited above, Taxpayer seeks a refund of the $1,400 in sales tax which Dealership initially remitted to Indiana at the time of the original sales transaction.

Taxpayer points out that the Indiana Tax Court only recently provided guidance on this issue in SAC Finance, Inc. v. Indiana Dept. of State Revenue, 24 N.E.3d 541 (Ind. Tax Ct. 2014) and SAC Finance, Inc. v. Indiana Dept. of State Revenue, 894 N.E.2d 1116 (Ind. Tax Ct. 2009) and that the Department is interposing a prerequisite - that it be a "registered retail merchant - not contemplated by either the Tax Court or Indiana law. According to Taxpayer, the Department should simply "consider substance over matter . . . ." Taxpayer admits that it "had not registered as a retail merchant . . ." but argues that it "did have Indiana sales exempt from Indiana sales tax although a merchant's certificate was not applied for." (Emphasis added).

IC § 6-2.5-8-1(a) provides as follows: "A retail merchant may not make a retail transaction in Indiana, unless the retail merchant has applied for a registered retail merchant's certificate." IC § 6-2.5-9-2 emphasizes the significance Indiana attaches to this "certificate" stating that, "A retail merchant who makes a retail transaction without having applied for or obtained a registered retail merchant's certificate or a renewal of a registered retail merchant's certificate or after the retail merchant's certificate has been revoked or suspended by the department commits a Class A misdemeanor." (Emphasis added).

In Taxpayer's case, it is seeking from the Department a refund of sales tax attributable to defaulted installment agreements. Indiana's law in this instance is found at IC § 6-2.5-6-9 which provides in small part:

> (a) In determining the amount of state gross retail and use taxes which a retail merchant must remit under section 7 of this chapter, the retail merchant shall, subject to subsections (c) and (d), deduct from the retail merchant's gross retail income from retail transactions made during a particular reporting period, an amount equal to the retail merchant's receivables which:
> (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
> (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
> (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(Emphasis added).

In addition, IC § 6-2.5-6-9(d)(4) specifically provides, "If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. . . ." (Emphasis added).

The entire statutory provision on which Taxpayer relies is replete with references as to what a "retail merchant" can and cannot do. Nowhere in the provision is there a single reference to the right of a finance company to obtain a refund of any portion of a retail transaction for which it was not acting as the "merchant."

Since Taxpayer did not register as a retail merchant until October 2015, it could not have been acting as a participatory retail merchant at the time the installment plans originated and may not now rely on IC § 6-2.5-6-9 in an attempt to recover sales tax associated with those payment plans.

FINDING

Taxpayer's protest is respectfully denied.

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An html version of this document.