

Memorandum of Decision: 04-20170120R**Sales Tax****For Tax Periods Ending November 30, 2013 and December 31, 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

Business provided sufficient documentation to establish that sales tax at issue in a refund claim was paid by the business and not an employee. Since the business purchased the tangible personal property for resale, the purchases at issue were not subject to sales tax and refund is appropriate.

ISSUE**I. Sales Tax—Refund.**

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-8; IC § 6-8.1-9-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer is an Indiana business. In September of 2016, Taxpayer filed a claim for refund of sales tax paid on purchases of tangible personal property ("TPP") it made during the months of November and December of 2013. Taxpayer claimed the resale exemption on the purchase of the TPP. After review, the Indiana Department of Revenue ("Department") denied the claim on the basis that the invoices listed an employee as the purchaser rather than the business. Taxpayer protested the denial of the claim for refund. An administrative hearing was held and this Memorandum of Decision results. Further facts will be supplied as required.

I. Sales Tax—Refund.**DISCUSSION**

Taxpayer protests the Department's denial of its claim for refund of sales tax for the months of November and December of 2013. The Department denied the claim after review of the invoices supplied in the refund claim process. That review showed that the invoices listed an employee as the customer. The Department therefore considered the employee to be the purchaser and to be the person who would have standing to claim a refund. The determination on whether or not the employee would qualify for a refund would then be a separate question. Taxpayer protests that it was the purchaser and that the employee was only acting as an employee when the transactions occurred. Taxpayer also stated that it later learned that it could use its exemption certificate to make the purchases and has been doing so since the refund period.

As an initial point, the Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the initial refund determination, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (Emphasis added).

Next, 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.

Finally, IC § 6-8.1-9-1(a) provides:

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 (f) and (g), 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.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

In this case, Taxpayer states that it purchased the TPP for resale. The employee, Taxpayer explains, was required to give a name to the vendor of the TPP and used his own name. The employee was acting in his employment capacity for Taxpayer in executing the transactions. Also, the employee paid for the TPP with a company credit card. In the course of the protest process, Taxpayer provided extensive documentation supporting these positions.

After review, the Department agrees with Taxpayer's protest. The documentation establishes that the credit card used to purchase the TPP was Taxpayer's and not the employee's. Also, Taxpayer has established that the TPP was purchased for resale. Therefore, under IC § 6-2.5-5-8(b) Taxpayer's purchase of the TPP qualified for the resale exemption and no sales tax should have been paid on those transactions. Since Taxpayer filed the claim for refund within three years of paying the taxes, it met the requirements of IC § 6-8.1-9-1(a). Taxpayer has established that it is entitled to the claimed refund.

FINDING

Taxpayer's protest is sustained.

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