

DEPARTMENT OF STATE REVENUE

04-20160726R.ODR

Final Order Denying Refund Number: 04-20160726R
Sales Tax
For The 2010, 2011, and 2012 Tax Years

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

Business was not entitled to the refund because its supporting documents failed to support that it was entitled to the refund, which was a payment stemming from a sales/use audit three years earlier.

ISSUE

I. Sales Tax - Refund of Tax Payment Stemming From Earlier Audit Assessments.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-2.5-13-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Miller Brewing Co. v. Indiana Dep't of State Revenue, 903 N.E.2d 64 (Ind. 2009); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); [45 IAC 2.2-2-1](#).

Taxpayer protests the partial refund denial of sales tax which was collected at the time of the sale.

STATEMENT OF FACTS

Taxpayer is an Indiana S Corporation manufacturing and installing cabinets for customers in Indiana and Florida. All cabinets are manufactured in Taxpayer's Indiana shop. For its Indiana customers, Taxpayer's owner installs the cabinets himself after the cabinets are made. Taxpayer also has a Florida location, which is used for sales only. After cabinets are manufactured in its Indiana facility, the cabinets are delivered to Florida and occasionally local contractors are engaged to install them for its Florida customers.

In 2013, the Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records for tax years 2010, 2011, and 2012 ("Tax Years at Issue"). The audit determined that Taxpayer did not maintain adequate records. As a result, the Department relied on the best information available during the audit, including Taxpayer's federal return 1120S and its Florida sales tax returns for those tax years. The audit concluded that Taxpayer underreported its Indiana sales and assessed additional sales tax, interest, and penalty for the Tax Years at Issue. Taxpayer paid the assessments.

In 2016, Taxpayer filed a claim for refund (Claim Number 1228564), claiming that it overpaid the sales tax, in the amount of \$30,306.20, to Indiana. The Department, after review, denied the claim in full.

Taxpayer protested the refund denial. An administrative phone hearing was held. This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales Tax - Refund of Tax Payment Stemming From Earlier Audit Assessments.

DISCUSSION

Upon initial review of Taxpayer's refund claim, the Department determined that Taxpayer was not entitled to the refund of \$30,306.20. The Department, in the October 24, 2016, letter explained, as "[t]he supporting documentation you submitted does not substantiate the basis of your claim for refund."

Taxpayer disagreed and stated in part, as follows:

The audit results included additional Indiana sales tax assessment on . . . sales over the [three-]year audit

period, made up of the difference in sales per the 1120S returns and the monthly sales tax returns for the [three-]year period. [Taxpayer] maintains that the additional sales that the auditor is assessing Indiana sales tax on are actually Florida sales that were correctly reported

Taxpayer thus argued that it is entitled to the refund and that the Department erroneously denied its refund.

Although Taxpayer technically protested the Department's refund denial, it actually is contesting the audit's assessment of tax on the underreported Indiana sales for the Tax Years at Issue. Indiana mandates that every person who is subject to a listed Indiana tax must keep books and records, including all source documents, "so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). "If the [D]epartment reasonably believes that a person has not reported the proper amount of tax due, the [D]epartment shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment." IC § 6-8.1-5-1(a). Thus, as a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012).

Additionally, "[e]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Rev.* 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

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 personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana]" IC § 6-2.5-13-1(d)(1). 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 [] tax[], 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 [] tax on that purchase." *Id.* 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.

During the audit, the Department determined that Taxpayer did not maintain adequate sales records of its Indiana sales. The best information available during the audit was the information reported in Taxpayer's federal and Florida returns. As a result, to determine the proper amount of Indiana sales tax for the Tax Years at Issue, the audit was required to calculate the amount of Taxpayer's Indiana gross receipts. Thus, the Department resorted to using the total gross receipts from the federal returns reported by Taxpayer as a starting point and then subtracted the gross receipts reported on Taxpayer's Florida sales tax returns to arrive at the amount of the Indiana gross receipts.

During the protest, Taxpayer argued that the audit assessments were wrong because its records showed its Florida gross receipts for those years were more than the amount the audit stated in the audit report. To support its protest, in addition to its Florida monthly sales/use tax returns, and various service contracts or customers' orders, Taxpayer offered its bank statements and Excel Worksheets summarizing the total amount of the Florida sales.

Upon review, however, Taxpayer's reliance on its records is misplaced. As mentioned above, Taxpayer is required to "keep books and records so that the [D]epartment can determine the amount, if any, of [its] liability." IC § 6-8.1-5-4(a). "The records . . . include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks." Presumably, Taxpayer filed its Florida returns and properly reported its Florida sales, referencing its Florida sales records, including service contracts and customers' orders. In the absence of the verifiable source documents, the audit conducted in 2013 properly relied on the information stated in Taxpayer's federal and Florida returns.

The Department does not dispute that Taxpayer had Florida sales. However, the Department is not able to agree that Taxpayer is entitled to the refund it claimed because Taxpayer here essentially argued that its Florida sales should have been more than what it had reported in 2010, 2011, and 2012; however, Taxpayer's records presented here were not verifiable and failed to support its assertion that its Florida sales should have been more than it reported to Florida.

For example, Taxpayer's records demonstrated that some Florida customers only ordered cabinets while others also had the cabinets installed. Taxpayer did not invoice its customers; nor did it provide receipts for its sales. Rather, Taxpayer offered documents such as a "Contract for Services" or a form which resembles a customer's order, to support its Florida sales. The forms and "Contract[s] for Services" were not sequential and its record keeping was not consistent. Specifically, Taxpayer did not use the order form for every customer. Neither did every customer enter and sign the "Contract for Services." The forms further demonstrated that Taxpayer used its computer system to record Florida customers' orders. When the customers placed the orders, they made deposit payments. The transactions were properly dated with the payment amount and check number. Various hand-written notations, however, were made when the orders were modified. Similarly, when the customers made the subsequent payment or payments several months later, information was noted manually, including hand-written notes of paid in full (or balance due), date, and information for the amount of tax. Taxpayer's documents further showed that several transactions were recorded more than once in its workpapers which it used to calculate its Florida sales for refund purposes.

Thus, given the totality of the circumstances, in the absence of other verifiable documentation to substantiate its claim, the Department is not able to agree that Taxpayer met its burden of proof demonstrating that the proposed assessment is not correct and that it was entitled to the refund.

FINDING

Taxpayer's protest is denied.

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