
DEPARTMENT OF STATE REVENUE

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04-20170326R.ODR; 04-20170327R.ODR; 04-20170328R.ODR;
04-20170329R.ODR; 04-20170330R.ODR; 04-20170331R.ODR;
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**Final Order Denying Refund: 04-20170323R; 04-20170324R; 04-20170325R; 04-20170326R; 04-20170327R;
04-20170328R; 04-20170329R; 04-20170330R; 04-20170331R; 04-20170332R; 04-20170333R; 04-20170334R;
04-20170335R; 04-20170336R; 04-20170337R; 04-20170338R; 04-20170400R; 04-20170340R;
04-20170341R; 04-20170342R; 04-20170343R; 04-20170344R; 04-20170345R; 04-20170346R**

**Sales Tax
For The Tax Year 2016**

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

Healthcare Facility Management Company was not entitled to refund of sales tax paid on purchases made on behalf of not-for-profit hospitals because the Healthcare Facility Management Company was not the taxpayer in the transactions and therefore lacked standing to request the refund.

ISSUE

I. Sales and Use Tax—Refund - Standing.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-5-25; IC § 6-2.5-6-13; IC § 6-8.1-9-1; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999).

Claimant protests the denial of a refund of sales tax paid on purchases of supplies made on behalf of healthcare facilities.

STATEMENT OF FACTS

Refund claimant ("Claimant") is a for-profit healthcare facility management company. Claimant and its affiliate were contracted to manage multiple long-term care facilities ("Facilities") on behalf of seven non-profit hospitals ("Hospitals") under the terms of various executed management agreements between Claimant and the Hospitals. Claimant's affiliate established separate, wholly-owned disregarded entities to manage each contract. Under the terms of each contract, the Hospitals are the operators of the Facilities and have the ultimate legal responsibility for the operation and control of each Facility. The Hospitals are responsible for the care of their patients as well as the financial risks and rewards of operating the Facilities.

To assist the Hospitals with the management of the Facilities' operations, the management agreements provide that Claimant has the authority to make purchases of supplies on behalf of the Facilities. Claimant issues checks drawn on the Facilities' operating accounts, owned exclusively by their respective Hospitals, in order to pay the Facilities' operating expenses. Claimant does not pay for these expenses through its own bank account. In 2016, the Hospitals purchased repair supplies for the Facilities from a heating and air conditioning vendor ("HVAC supplies"). The vendor invoiced Claimant as facility manager and direct shipped the supplies to the Facilities.

Claimant filed twenty-four GA-110L forms requesting refunds on behalf of the seven Hospitals and their associated Facilities for the sales tax paid on the purchases of the HVAC supplies, claiming an exemption for purchases of tangible personal property made by a non-profit entity to further its not-for-profit purpose. The Indiana Department of Revenue ("Department") denied Claimant's refund claims, stating, "The exemption granted to [Hospital] does not extend to [Claimant]." Claimant filed the instant protests and an administrative hearing was held. This Final Order Denying Refund results. Additional facts will be addressed below as necessary.

I. Sales and Use Tax—Refund - Standing.**DISCUSSION**

Claimant protests the denial of its claims for refund of sales tax paid on the purchases of HVAC supplies made on behalf of the Hospitals for repairs at the Facilities. Claimant's refund claims assert that the purchases were exempt from sales tax under IC § 6-2.5-5-25, which provides an exemption from the state gross retail tax for transactions involving tangible personal property purchased by a not-for-profit organization and primarily used to carry on the organization's not-for-profit purpose. Claimant argues that it should be treated as a "conduit to the transaction" and therefore should be granted the exemption because the purchases were made to carry out the Hospitals' exempt purpose, which is to provide medical and personal care to the sick and elderly.

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.'" *Dep't 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 shall be entitled to deference. In addition, "it is well-settled that tax exemptions are to be strictly construed against the taxpayer . . . and the taxpayer bears the burden of proving entitlement to the exemption." *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999).

Sales tax, also referred to as gross retail 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*).

IC § 6-2.5-6-13 provides the grounds upon which a taxpayer may seek a refund of gross retail tax:

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](#).

Indiana's tax refund procedures are found in IC § 6-8.1-9-1(a), which states:

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.

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.

Claimant asserts that it is entitled to a refund based on the Hospitals' purchases of the HVAC supplies to further the Hospitals' not-for-profit purpose. Claimant acknowledges that the ultimate consumers in these transactions are the Hospitals and Facilities; however, Claimant argues that it should be treated as a "conduit" to the transaction and should therefore be granted the same exemption from sales tax that Hospitals are entitled to as not-for-profit entities. Per the terms of the management agreements, Claimant acquired the HVAC supplies on behalf of Hospitals and paid for these supplies from bank accounts owned by the Hospitals as operators of the

Facilities. The HVAC supplies were then shipped directly to the Facilities. The management agreement further provides that "[i]nventories and supplies shall remain the property of the Sublessor [Facility] throughout the Term," with "inventory and supplies" defined to include "mechanical supplies." Claimant never had any ownership interest in the HVAC supplies and merely performed the administrative function of ordering the supplies to fulfill its obligation to manage the Facilities.

As provided by IC § 6-2.5-2-1(b), the person who acquires property in a retail transaction is liable for the tax on the transaction. In this case, that person is each Hospital or Facility, not Claimant. Claimant does not refer to any Indiana statute, regulation, or court case which would allow the Department to issue a refund of tax to anyone other than the person who bore the liability for that tax, or which states that a tax exemption is transferrable to another entity. Therefore, the Department concludes that Claimant lacks standing to request the sales tax refunds at issue, and the entities that bore the liability for the tax in these transactions would be the proper refund claimants.

Claimant also submitted an ST-105 General Sales Tax Exemption Certificate requesting a single purchase exemption on the HVAC supply purchases. However, Claimant is not a "retail merchant" selling at retail as defined in IC § 6-2.5-4-1 because it did not itself purchase the HVAC supplies for purposes of resale and then transfer the supplies to its customers, and thus would have had no basis for collecting sales tax on the transactions. Rather, the retail merchant in these transactions was the HVAC vendor who collected and remitted the sales tax on the purchases. Therefore, the ST-105 form filed by Claimant is inapplicable and is not a valid basis for issuing a refund of sales tax to Claimant.

Because Claimant has not shown that it bore or paid any of the tax liability in the transactions at issue, the Department was correct in denying its claims for refund of sales tax. Due to Claimant's lack of standing to request the refund, this decision does not address the merits of argument that the HVAC supplies were purchased by the Hospitals for an exempt purpose under IC § 6-2.5-5-25.

FINDING

Claimant's protests are respectfully denied.

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