

Memorandum of Decision: 04-20170174R
Gross Retail Tax
For the Years 2013 through 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 Memorandum of Decision.

HOLDING

Telecommunication Provider established that it was entitled to a refund of Indiana sales tax paid on the purchase of equipment and supplies used to provide telecommunication services.

ISSUE

I. Gross Retail Tax - Telecommunication Equipment.

Authority: IC § 6-2.5-5-13; *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974).

Taxpayer argues it is entitled to a refund of sales tax paid on the purchase of equipment because the equipment is used to furnish or sell telecommunications services.

STATEMENT OF FACTS

Taxpayer is an out-of-state company which provides telecommunication services to individual consumers and businesses. Taxpayer purchased equipment and materials which were delivered to one of Taxpayer's business locations. Taxpayer paid Indiana sales tax on the purchases.

Taxpayer submitted to the Indiana Department Revenue ("Department") a form GA-110L ("Claim for Refund") requesting a refund of sales tax. The Department denied the refund in a letter dated February 2017. The letter stated that the "claim for refund did not include the information necessary for the Department to verify the claim."

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 Memorandum of Decision results.

I. Gross Retail Tax - Telecommunication Equipment.

DISCUSSION

The issue is whether the Taxpayer's purchase of equipment and supplies are exempt from sales tax because the equipment and supplies are used to provide telecommunication services.

Taxpayer paid Indiana sales tax when it purchased the equipment and supplies but argues that it is now entitled to a refund under the sales tax exemption provision found at IC § 6-2.5-5-13 which states as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is:

- (A) classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission;
- (B) mobile telecommunications switching office equipment, radio or microwave transmitting or receiving equipment, including, without limitation, towers, antennae, and property that perform a function similar to the function performed by any of the property described in clause (A); or
- (C) a part of a national, regional, or local headend or similar facility operated by a person furnishing

- video services, cable radio services, satellite television or radio services, or Internet access services; and
- (2) the person acquiring the property:
 - (A) furnishes or sells intrastate telecommunication service in a retail transaction described in [IC 6-2.5-4-6](#); or
 - (B) uses the property to furnish:
 - (i) video services or Internet access services; or
 - (ii) VOIP services.

IC § 6-2.5-5-13 like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999). A statute which provides a tax exemption is "strictly construed against the taxpayer." *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). Nevertheless, the Department is well aware of the countervailing rule that a "statute must not be construed so narrowly that it does not give effect to legislative intent because the intent of the legislature embodied in a statute constitutes the law." *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991) (*Emphasis added*).

Taxpayer has provided documentation detailing each item of equipment at issue, where the equipment was installed and how utilized, and establishing that it paid Indiana sales tax at the time of the original purchases. In addition, Taxpayer has provided documentation verifying that it is in the business of providing telecommunication services as required under IC § 6-2.5-5-13. The Department concludes that Taxpayer has established that the equipment and supplies fall under the statutory exemption.

FINDING

Taxpayer's protest is sustained.

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