

Final Order Denying Refund: 04-20170227R
Gross Retail Tax
For the Years 2013, 2014, and 2015

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. 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

Company could not provide documentation that the property on which sales tax was paid was used or consumed during public transportation.

ISSUE

I. Gross Retail Tax - Public Transportation Exemption.

Authority: IC § 6-2.5-5-27; *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-5-61](#).

Taxpayer maintains that it is entitled to a refund of sales tax on the tangible personal property because the property was used directly in providing public transportation.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing transportation services. Taxpayer provides these services both within Indiana and outside Indiana.

Taxpayer submitted a form GA-110L ("Claim for Refund") seeking a refund of sales tax it paid. Taxpayer claimed that it is exempt from paying sales tax because it qualifies for the public transportation exemption. The Indiana Department of Revenue ("Department") denied the refund on the ground that "based on the documentation provided with the claim and review of the claim, the taxpayer purchases the packaging/shipping supplies from [third party] and [third party] ships the supplies to companies throughout Indiana. The companies receiving the supplies are not charged for the supplies and are given the supplies at no cost. Therefore, the taxpayer is not using the supplies directly themselves in providing public transportation and the supplies are not for resale, so the taxpayer is responsible for the use tax on the items."

Taxpayer filed a protest challenging the refund denial. An administrative hearing was conducted during which Taxpayer explained the basis for the protest. This Final Order Denying Refund results. Further facts will be supplied as required.

I. Gross Retail Tax - Public Transportation Exemption.

DISCUSSION

The issue is whether the property in question is consumed directly in public transportation and is therefore exempt from sales tax. IC § 6-2.5-5-27 provides a sales tax exemption for entities engaged in public transportation. In part, the exemption provides as follows:

Except as provided in subsection (b), transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

IC § 6-2.5-5-27(a).

The companion regulation states in part:

The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.

[45 IAC 2.2-5-61](#)(a).

A statute such as IC § 6-2.5-5-27, 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). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101.

In this case, Taxpayer explained that it purchased boxes, envelopes, etc., from the third party. Taxpayer then delivers the property to its customers. Taxpayer does not charge customer for these items. It is Taxpayer's practice to provide these boxes to customers free of charge, customers then fill the boxes, and Taxpayer then ships the boxes, charging the customer for shipping services not for the boxes, envelopes, etc.

While Taxpayer is engaging in public transportation when it ships customer filled boxes, it retains ownership of the boxes at the time it purchases them from third party but does not itself use the boxes to transport property. Taxpayer then gives the boxes and envelopes to the customers free of charge. The customers then own the boxes and can do what they please with the boxes. Thus, the property purchased by Taxpayer is not used or consumed in public transportation. Therefore, Taxpayer properly paid sales tax at the time of purchase.

FINDING

Taxpayer's protest is denied.

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