

Memorandum of Decision: 04-20170306R
Sales Tax
For Tax Years 2014-15

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 electricity was used in a predominantly exempt manner. Therefore, Business was eligible for a refund of sales tax previously paid on the purchase of electricity.

ISSUE

I. Sales Tax–Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-5.1; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 2.2-4-13](#).

Taxpayer protests the denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer. Taxpayer filed a claim for refund of sales tax paid on the purchase of electricity during the tax years 2014 and 2015 ("Tax Years"). After an initial review, the Indiana Department of Revenue ("Department") denied the claim for refund on the basis that claim did not contain the necessary information to verify the claim. Taxpayer protested the denial. 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 denial of its claim for refund of sales tax which it paid at the time it purchased electricity. Taxpayer based its claim on the basis that determined that it had predominantly used the electricity in an exempt manner and therefore should not pay tax on those purchases. In its initial refund claim review, the Department determined that it did not have enough information to verify Taxpayer's claim. Taxpayer protests that it did provide sufficient information to verify its claim and has provided those materials again in the course of the protest process.

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*).

Also, IC § 6-2.5-5-5.1 states:

- (a) As used in this section, "tangible personal property" includes electrical energy, natural or artificial gas,

water, steam, and steam heat.

(b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

Next, 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.

Taxpayer protests that not only was the electricity used in an exempt manner, but that it is entitled to the predominant use exemption found at [45 IAC 2.2-4-13](#), which states:

- (a) *In general, the furnishing of electricity, gas, water, steam, or steam heating services by public utilities to consumers is subject to tax.*
- (b) The gross receipt of every person engaged as a power subsidiary or a public utility derived from selling electrical energy, gas, water, or steam to consumers for direct use in direct manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#) shall not constitute gross retail income of a retail merchant received from a retail transaction. *Electrical energy, gas, water, or steam will only be considered directly used in direct production, manufacturing, mining, refining, oil or mineral extraction, irrigation, agriculture, or horticulture if the utilities would be exempt under [IC 6-2.5-5-1](#).*
- (c) Sales of public utility services or commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#), based on a single meter charge, flat rate charge, or other charge, are excepted if such services are separately metered or billed and will be used predominantly for the excepted purposes.
- (d) Sales of public utility services and commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, or horticulture, based on a single meter charge, flat rate charge, or other charge, which will be used for both excepted and nonexcepted purposes are taxable unless such services and commodities are used predominantly for excepted purposes.
- (e) *Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominantly for excepted purposes. Predominant use shall mean that more than fifty percent (50[percent]) of the utility services and commodities are consumed for excepted uses. (Emphasis added.)*

In the course of the protest process, Taxpayer provided a utility study and supporting documentation which confirms that Taxpayer used the electricity in its manufacturing process, as provided by IC § 6-2.5-5-1(b). The utility study confirms the number of hours of exempt usage and overall usage of the various machines and devices drawing electricity from a single meter. The utility study also confirms that Taxpayer meets the predominant use exemption found under [45 IAC 2.2-4-13](#). Therefore, since Taxpayer filed the claim for refund within the time limitations listed under IC § 6-8.1-9-1(a), and since Taxpayer has established that it meets the sales tax exemption criteria listed under IC § 6-2.5-5-1(b) and predominant use exemption criteria listed under [45 IAC 2.2-4-13](#), Taxpayer has established that its claim for refund of sales tax is correct.

FINDING

Taxpayer's protest is sustained.

Posted: 01/31/2018 by Legislative Services Agency
An [html](#) version of this document.