DEPARTMENT OF STATE REVENUE

04-20170489R.ODR
04-20170490R.ODR

Final Order Denying Refund: 04-20170489R; 04-20170490R
Sales/Use Tax
For the Years 2014 -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

Business did not qualify for the nonreturnable wrapping materials exemption.

ISSUE

I. Sales/Use Tax - Claims for Refund.

Authority: IC § 6-2.5-5-9; *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); Letter of Findings 04-20130125 (August 8, 2013).

Taxpayer protests the Department's denial of its refund claims.

STATEMENT OF FACTS

In March of 2017 Taxpayer filed two Claims for Refund (GA-110L form) with the Indiana Department of Revenue ("Department"), for the periods ending 2014 through 2016. In two separate letters dated April 27, 2017, the Department denied Taxpayer's refund claims. Both of those letters stated that the denial was because, pursuant to 45 IAC 2.2-5-16, "fulfillment companies do not qualify for the nonreturnable wrapping materials exemption." Taxpayer filed a protest regarding the Department's refund denial letters. An administrative hearing was conducted and this written ruling results.

I. Sales/Use Tax - Claims for Refund.

DISCUSSION

Taxpayer states that its protest is for "sales taxes paid on nonreturnable wrapping materials for the years 2014 through 2016. Both claims were denied in full because 'fulfillment companies do not qualify for the nonreturnable wrapping materials exemption per 45 IAC 2.2-5-16.'" In an e-mail, subsequent to the hearing, Taxpayer's representative states:

> [Taxpayer] has two primary parcel solutions in its [], Indiana [] facility. The first solution is the management of large volumes of parcels of merchandise from e- commerce, catalogue, and televised home shopping retailers primarily to consumers' homes. [Taxpayer's] customers deliver parcels of various sizes and weights to its [] facility. Upon arrival, parcels are sorted into USPS mail and shipment classifications and properly labeled for accurate delivery through the USPS local delivery network. Parcels are consolidated by destination region and placed in large, corrugated, non-returnable container boxes ("gaylords") or smaller bundles are stretch wrapped. The aggregated bundles or boxes are labeled and transported by a third-party transportation provider and placed into the USPS delivery network at carefully calculated locations, ranging from USPS National Distribution Centers to local post offices, in order to minimize handling and reduce postage and delivery costs for its retail customers. The [facility] effectively serves as a processing center for the final phase of processing its retail customers packages for labeling and delivery through the USPS. [Taxpayer] does not take title to its customers [*sic*] merchandise; it processes the merchandise on behalf of the retailer; after the processing, the merchandise is ready for sale and delivery to consumers, and the retailer and consumer can track the delivery.

Taxpayer's refund claims are for "two different vendors," which were for purchases of "gaylords, pallets, labels, stretch wrap, and sealing tape acquired by [Taxpayer] for use as nonreturnable packages for the delivery of

tangible personal property. . . ."

IC § 6-2.5-5-9, which was amended in 2012, states:

> (a) As used in this section, "returnable containers" means containers customarily returned by the buyer of the contents for reuse as containers.
> (b) Sales of returnable containers are exempt from the state gross retail tax if the transaction constitutes selling at retail as defined in IC 6-2.5-4-1 and if the returnable containers contain contents.
> (c) Sales of returnable containers are exempt from the state gross retail tax if the containers are transferred empty for the purpose of refilling.
> *(d) Sales of wrapping material and empty containers are exempt from the state gross retail tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for:*
> (1) selling the contents that the person adds; or
> *(2) shipping or delivering tangible personal property that:*
> *(A) is owned by another person;*
> *(B) is processed or serviced for the owner; and*
> *(C) will be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in the owner's business of manufacturing, assembling, constructing, refining, or processing.*
> (*Emphasis added*)

Taxpayer's argument is that it meets the requirements of IC § 6-2.5-5-9(d)(2). Taxpayer states that the property being shipped is: "1) owned by its retail customers, 2) is processed or serviced for the retail customers, and 3) will be sold by the retail customer in the same form." At issue here are "gaylords, pallets, labels, stretch wrap, and sealing tape."

Turning to IC § 6-2.5-5-9, the Department notes that part (d)(2)(B) states that the tangible personal property, owned by another, being shipped or delivered "is processed or serviced for the owner[.]" This portion of the statute, dealing with processing or servicing, must be viewed in full context with the part that follows–namely, IC § 6-2.5-5-9(d)(2)(C). That portion of the statute states the property will be sold in the same form (i.e., the form after the processing or servicing that occurs in IC § 6-2.5-5-9(d)(2)(B)) or as part of other tangible personal property produced by "the owner's business of manufacturing, assembling, constructing, refining, or processing." Taxpayer asserts that it "processes and services the products for the owner" by "storing, sorting, aggregating and processing the consumer products." Beyond the circularity of Taxpayer's explanation ("processes" is in part defined by Taxpayer as "processing the consumer products"), the Department finds that storing, sorting, and aggregating are not processing or servicing. If the legislature intended for "processing or servicing" to mean storing, sorting, and aggregating, as Taxpayer argues, the statute would have used those words.

The industrial processing or servicing statute (IC § 6-2.5-4-2(c)) and IC § 6-2.5-5-9(d) parallel each other in pertinent respects. The former states:

> (c) Notwithstanding any provision of this article, a person is not making a retail transaction when he:
> (1) acquires tangible personal property owned by another person;
> (2) provides industrial processing or servicing, including enameling or plating, on the property; and
> (3) transfers the property back to the owner to be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.

Also, the Department has previously issued a Letter of Findings ("LOF") stating that IC § 6-2.5-5-9(d) applies to industrial processors. *See* Letter of Findings 04-20130125 (August 8, 2013). That LOF dealt with a taxpayer that was an industrial processor and was for the tax years 2010 and 2011; the LOF noted that prospectively IC § 6-2.5-5-9(d) would be applicable since that taxpayer was found to be an industrial processor. In the case presently at hand, Taxpayer is not processing or servicing, thus Taxpayer does not meet the requirements of IC § 6-2.5-5-9(d)(2)(B).

Taxpayer also states that the Indiana facility is used for returns. Taxpayer states that the facility is used in "the management of returned consumer merchandise from many leading U.S. online, catalogue and other direct-to-consumer retailers." Taxpayer states that:

> For merchandise returns, the consumer initiates the return process by using the [Taxpayer's] []Label included with the originally delivered parcel (or printed online) and tenders it to the USPS. Return parcels are scanned

> by USPS personnel upon receipt. Based on information contained in the [Taxpayer's] []Label, the USPS stages a return parcel at a designated USPS facility where the parcels are consolidated for pickup by third-party transportation providers and transported to the [Taxpayer's] []Center facility. At the [] facility, parcels are scanned and sorted for return for retail customer destinations according to customer-established rules. Parcels are consolidated, bundled in gaylords or stretchwrap, and delivered to customer designated facilities, minimizing handling and reducing transportation costs. The merchandise can be tracked and coordinated into the retailer's facilities for additional processing and resale to consumers.

Regarding this portion of its protest, Taxpayer argues that the "retail products are returned to the owner/retailer for further processing and resale to USPS for delivery by owner to its end customer." Again, Taxpayer has not established that it meets the criteria of IC § 6-2.5-5-9 and in addition to the analysis above, in the return situation it is not clear who the owner of the retail property is. Since IC § 6-2.5-5-9 has exemption provisions, it 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). Taxpayer has failed to establish that it meets the requirements of IC § 6-2.5-5-9.

FINDING

Taxpayer's protest is denied.

Posted: 01/31/2018 by Legislative Services Agency
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