

## DEPARTMENT OF STATE REVENUE

**Memorandum of Decision: 04-20171013R; 04-20171014R; 04-20171015R;  
04-20171016R; 04-20171017R; 04-20171018R; 04-20171019R; 04-20171020R;  
04-20171021R; 04-20171022R; 04-20171023R; 04-20171024R; 04-20171025R;  
04-20171026R; 04-20171027R; 04-20171028R; 04-20171029R; 04-20171030R;  
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04-20171043R; 04-20171045R; 04-20171046R; 04-20171048R; 04-20171049R;  
04-20171051R; 04-20171052R; 04-20171053R; 04-20171055R; 04-20171057R;  
04-20171058R; 04-20171060R; 04-20171061R; 04-20171063R; 04-20171064R;  
04-20171065R; 04-20171067R; 04-20171069R; 04-20171070R; 04-20171071R;  
04-20171072R; 04-20171074R; 04-20171076R; 04-20171078R; 04-20171079R;  
04-20171081R; 04-20171082R; 04-20171083R; 04-20171084R; 04-20171085R;  
04-20171086R; 04-20171087R; 04-20171088R; 04-20171089R; 04-20171090R;  
04-20171091R; 04-20171092R; 04-20171093R.**

**Gross Retail Tax  
For the Years 2009 through 2011**

**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

Restaurant Company was able to establish in part that the Department erred in denying a refund of sales tax paid on the purchase of utilities; a portion of the refund claims in dispute were filed within the relevant three-year statute of limitations.

### ISSUE

#### I. Gross Retail Tax - Statute of Limitations.

**Authority:** IC § 6-8.1-9-1(a); IC § 6-2.5-5-5.1(c) (Repealed July 1, 2015).

Taxpayer argues that the Department of Revenue erred in denying it a refund of sales tax paid on the purchase of utilities. According to Taxpayer, the refund requests were not outside the statute of limitations.

### STATEMENT OF FACTS

Taxpayer is an Indiana business which operates restaurants across the state. Taxpayer submitted a request for a refund of sales tax paid on the purchase of utilities consumed by its restaurants. The Indiana Department of Revenue ("Department") reviewed the information submitted by Taxpayer. The Department's review resulted in a decision granting the refund in part and denying the refund in part.

The Department denied that portion of the refund claimed for utilities consumed in November and December 2011 on the ground that a portion of the original refund request "exceed[ed] the Indiana Statute of Limitations."

Taxpayer disagreed with the decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Memorandum of Decision results. The multiple restaurants require multiple docket numbers for this Memorandum of Decision.

#### I. Gross Retail Tax - Statute of Limitations.

### DISCUSSION

The issue is whether Taxpayer has established that the relevant portions of Taxpayer's refund requests were submitted within the three-year statute of limitations.

#### A. Taxpayer's Two Refund Scenarios.

Taxpayer provides the following information outlining two different refund scenarios.

### **1. 2009 through 2011 Sales Tax Paid December 2012.**

According to Taxpayer, the Department previously audited Taxpayer's restaurant operations for the years 2009 through 2011. That previous audit resulted in an assessment of approximately \$28,000.

On December 13, 2012, Taxpayer paid the \$28,000 assessment.

Taxpayer thereafter prepared a "utility study" purporting to document the extent to which Taxpayer's restaurant consumed utilities in an exempt fashion. Following submission of the study, the Department issued Taxpayer forms ST-109 ("Indiana Utility/Communication Sales Tax Exemption Certificate") for each of the Indiana restaurant locations. (The ST-109 is an exemption for a specific utility meter.)

In September 2015, Taxpayer submitted a refund request equal to the amount of tax (\$28,000) it paid December 13, 2012.

The Department denied the refund on the ground that the refund was submitted outside the three-year statute of limitations.

Taxpayer disagrees arguing that IC § 6-8.1-9-1(a) allows for a refund filed within a three-year period after the date of payment which - according to Taxpayer - was December 13, 2012.

Taxpayer concludes that the statute of limitations was extended until December 13, 2015 based on the December 13, 2012, payment.

### **2. November and December 2011 Sales Tax Paid.**

Taxpayer again notes that the Department issued Taxpayer's restaurants forms ST-109 for each of its Indiana restaurant locations.

Taxpayer submitted multiple refund claims in August and December of 2015.

The Department granted the refund claims with one exception; the Department denied refund claims totaling approximately \$9,500 associated with November and December 2011 utility payments on the ground that these refund claims were outside the three-year statute of limitations.

Taxpayer disagrees arguing that the sales tax returns for the 2012 payments on the November and December 2011 utility invoices were not due until December 31, 2012 and that the August and December refund claims were timely filed prior to December 31, 2015.

Taxpayer concludes that the August and December 2015 refund claims were timely filed because the claims were filed prior to December 31, 2015.

### **B. Statement of Law.**

The \$28,000 refund request is governed by IC § 6-8.1-9-1 which provides in part:

(a) 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.

The \$9,500 refund is governed by IC § 6-2.5-5-5.1(c) (Repealed July 1, 2015) which provides:

A refund claim based on the exemption provided by this section for electrical energy, natural or artificial gas, water, steam, and steam heat may not cover transactions that occur more thirty-six (36) months before the date of the refund claim.

**C. Conclusion.**

Because the refund claim was submitted within three years of the date of the original payment, under IC § 6-8.1-9-1, the \$28,000 refund request was timely.

Under the relevant controlling statute, IC § 6-2.5-5-5.1(c) the \$9,500 refund request was untimely because it was not submitted within 36 months of the utility transactions.

Taxpayer's protest is sustained in part and denied in part. The \$28,000 refund request was timely filed while the \$9,500 refund was not timely filed.

**FINDING**

Taxpayer's protest is sustained in part and denied in part.

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