

DEPARTMENT OF STATE REVENUE

04-20170246R.MOD

Memorandum of Decision: 04-20170246R
Sales/Use Tax
For the Years 2014 & 2015

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 is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Company established that the sales tax that it paid for electricity used from a specific meter, for the month of May 2014, was paid in error and thus a sales tax refund was due for that portion of its refund claim.

ISSUE

I. Sales & Use Tax - Claim for Refund.

Authority: IC § 6-2.5-5-5.1; IC § 6-2.5-2-1; IC § 6-2.5-3-2.

Taxpayer protests the Department's denial of its claim for refund.

STATEMENT OF FACTS

Taxpayer filed a sales and use tax Claim for Refund (GA-110L) with the Indiana Department of Revenue ("Department") for the years 2014 and 2015. Taxpayer's refund claim was partially granted by the Department in a letter dated March 9, 2017. Taxpayer filed a protest regarding the portion of the refund claim that was denied. An administrative hearing was held, and this written ruling results.

I. Sales & Use Tax - Claim for Refund.

DISCUSSION

Taxpayer states that it is a manufacturer. Taxpayer states that it has a plant in Indiana, and that as part of its operations it "purchases items which may be taxable or nontaxable under Indiana Code [] 6-2.5-5-5.1."

Indiana imposes a sales tax, found at IC § 6-2.5-2-1, on retail transactions. The statute states that the "retail merchant shall collect the tax as agent for the state." Indiana also has a use tax statute, which is found at IC § 6-2.5-3-2. In the event that an Indiana retail transaction occurs where sales tax is due, but was not collected, then Indiana use tax is due. Use tax is accrued and remitted by the purchaser, not the retail merchant.

Indiana also provides exemptions for sales and use tax. One such exemption is IC § 6-2.5-5-5.1, which states that "tangible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam heat." IC § 6-2.5-5-5.1 also states that "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" Taxpayer's protest is specifically regarding electricity used in manufacturing that Taxpayer argues is exempt.

Turning to the facts of the protest, Taxpayer filed a Claim for Refund (GA-110L). The Department denied the refund claim, stating in a letter to Taxpayer:

Refunded taxpayer per the invoices submitted with the refund request. The Department does not have record of a utility exemption for meter [number ending in 3764] or an exemption for [utility company N] & [utility company R]. See the enclosed spreadsheet.

Thus the question would appear to be whether or not Taxpayer has submitted documentation, *viz.*, invoices and exemption information for meter number ". . . 3764." Taxpayer, as part of its protest, provided a copy of the Department's denial letter and the spreadsheet. The copy of the spreadsheet provided by Taxpayer states it is for meter number ". . . 1476"—i.e., a different meter number than listed on the Department's denial letter. Given this,

Taxpayer's protest does not address the Department's stated denial reasons regarding meter ending in "3764" and instead addresses issues in the spreadsheet ("Workpaper") as relates to meter ending in "1476."

Taxpayer states in its protest letter:

The Department denied \$9,989.07 in sales tax on Petitioner's purchase of electricity from [utility A]. The invoice associated with this transaction is enclosed as Exhibit D. The Notice of Refund Claim Denial indicated that the Department denied Petitioner's refund claim for this transaction because it did not have a record of a utility exemption for meter number [. . .] 3764.

Taxpayer states that "the meter number listed on the invoice issued by [utility A] for this transaction is meter number [. . .] 1476." Taxpayer further states that "[t]his meter number is the same meter number listed on all other [utility A] invoices included in this claim, on which the Department approved a refund of sales tax."

Taxpayer, in a follow-up e-mail, states that it "purchased electricity used directly and exclusively in the production of tangible personal property" from [utility A]. Taxpayer states:

The Department denied \$9,989.07 in sales tax on Petitioner's purchase of electricity from [utility A] for invoice [number ending in 1233]. The Department did not issue a refund for meter [. . .1476] with a due date in May 2014 per the Department's Workpapers. Meter number [. . .1476] is listed as 100[percent] exempt per the Department's Workpapers. A copy of the Notice of Refund Denial and Workpapers is attached as Exhibit A.

Taxpayer additionally provided a copy of the May 2014 invoice for meter number "1476." As Taxpayer points out, per the copy of the Workpaper meter number "1476" is listed as "100.00" percent exempt and there is not an entry for "May-14" on the Workpaper. The invoice provided shows a May 12, 2014, due date, meter number "1476," and Indiana service address, and sales tax in the amount of \$9,989.07.

Based on the information provided by Taxpayer, and subject to verification by the Department's refund section, Taxpayer's protest for this issue is sustained.

The remaining items protested by Taxpayer relate to use tax. Taxpayer states that the Department denied "\$17.41 in use tax accrued on invoices related to Petitioner's purchase of electricity from [utility A]." Taxpayer states that "the electricity purchased from [utility A] is used directly and exclusively in the production of tangible personal property" and that the meter number at issue is once again "1476." The refund section is directed to review the documentation supplied by Taxpayer (including Taxpayer's Exhibit H—"Use Tax Reconciliation and Accrual Schedule"); to the extent that the refund section can verify that use tax was indeed accrued and remitted by Taxpayer for meter number "1476"—i.e., the exempt meter per the Workpaper—then Taxpayer is sustained.

Next, Taxpayer states that the Department "denied \$290.19 in use tax accrued on invoices" for purchase of electricity from [utility A]. In this instance the meter numbers end in "7641" and "6588." Taxpayer's follow-up e-mail and documents, dated August 3, 2017, states for this portion of the protest "[c]opies of the invoices with these transactions are attached as Exhibit D" and that Exhibit A has a copy of the Department's "Workpaper." Taxpayer's Exhibit A—a copy of the Department's Workpaper—only lists meter number "1476." Taxpayer's protest on this issue is denied. Taxpayer has not established that the two meters at issue were completely exempt—Taxpayer's Exhibit A, as noted, only addresses the exemption of meter "1476."

The last protested issue relates to use tax that Taxpayer states it paid for "energy consulting services," with Taxpayer stating since "Indiana does not impose sales and use tax on consulting services" that "any use tax accrued [was] in error and a refund is due." Taxpayer, as part of its April 21, 2017, protest letter and documentation, states that the "invoices associated with these transactions are enclosed as Exhibit G." (Note: in subsequent correspondence to the Department, Taxpayer labeled these as Exhibit E). The invoices show a "monthly service fee" and an "invoice total," with no sales tax listed. Taxpayer states that it accrued use tax for the invoices. Taxpayer, however, did not provide the Department with proof of the use tax accrual and remittance, instead stating that "[d]ocumentation to support the accruals can be made available upon request by the Department." The Department's contact letter scheduling the hearing states in relevant part:

The administrative hearing is your opportunity to carefully, fully, and precisely define the legal and factual issues in dispute. It is also your opportunity and responsibility to provide the Department with a complete, well-organized record of any and all documents needed to support your position.

Taxpayer has failed to provide the Department with all of the relevant documents needed to support its argument

regarding the consulting services. Thus Taxpayer's protest is denied for this issue.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest of sales tax paid for May 2014 for the meter ending in number 1476 is sustained subject to the refund section's verification; likewise, the use tax protest for the meter ending in number 1476 is also sustained subject to the refund section's verification. Taxpayer is denied on all other issues protested.

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