

DEPARTMENT OF STATE REVENUE

04-20170598R.ODR

**Final Order Denying Refund: 04-20170598R
Sales and Use Tax
For Tax Year 2017**

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

Limited Liability Company (LLC) did not have standing to request a refund claim for sales tax paid by individual shareholder.

ISSUE**I. Sales and Use Tax—Refund.**

Authority: IC § 6-8.1-9-1; IC § 6-8.1-1-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of its claim for refund.

STATEMENT OF FACTS

Taxpayer is a limited liability company ("LLC") that filed a Claim for Refund (GA-110L) with the Indiana Department of Revenue ("Department"). Taxpayer believes that it erroneously collected and remitted sales tax to the Department, and thus filed a refund claim. The Department denied Taxpayer's refund claim in a letter dated June 7, 2017. Taxpayer in turn filed a protest with the Department. An administrative hearing was held; this written ruling results. Further facts will be presented as required.

I. Sales and Use Tax—Refund.**DISCUSSION**

The Department initially 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 all the Department's previous decisions, shall be entitled to deference.

The Department's denial letter states in relevant part that Taxpayer's refund claim was being denied in part:

Although a portion of the claim totaling \$4,909.99 has been granted, the amount of \$4,798.57 has been denied for reason(s) below.

[IC 6-8.1-9-1](#) provides in part: If a person has paid more tax than due . . . he may file a claim for refund.

In this particular situation the individual that created the taxable event, is not the person applying for the refund.

The statute cited in the Department's letter, IC § 6-8.1-9-1, states in pertinent 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.

At the hearing, Taxpayer's representative argued that the individual creating the taxable event and the entity applying for the refund were in effect the same. The reason for this, per the representative, is that the Taxpayer is an LLC (limited liability company) with a single individual shareholder. The latter, the individual shareholder, bought equipment for Taxpayer (i.e., the LLC) and erroneously paid sales tax. The argument is that there is no distinction between Taxpayer as LLC and the individual shareholder for federal income purposes (the individual shareholder files his federal 1040 with the LLC included in his return as Schedule C), and for Indiana income tax purposes the individual shareholder files a IT-40. Thus Taxpayer believes that the distinction between it as an LLC and the individual shareholder should not preclude it from receiving a *sales tax* refund.

The disregarding of the distinction between a business entity and its single owner that can occur for income tax purposes is a product of *federal income tax law*; the disregarding, however, does not apply to the Indiana sales tax law. Indiana income tax and Indiana sales tax are separate and distinct types of Indiana listed taxes (See IC § 6-8.1-1-1). Thus the Department does not find Taxpayer's argument using income tax law persuasive regarding the separate domain of Indiana sales tax law. For purposes of Taxpayer's refund claim for Indiana sales tax, the Department's denial letter was correct: the taxable event was created by the individual shareholder, yet the claim for refund was being applied for by the LLC. Pursuant to IC § 6-8.1-9-1, Taxpayer (the LLC) did not pay "more tax than the person determines is legally due," thus Taxpayer does not have standing to request the refund.

FINDING

Taxpayer's protest is denied.

February 23, 2018

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