

DEPARTMENT OF STATE REVENUE

04-20181296R.ODR

**Final Order Denying Refund: 04-20181296R
Sales and Use Tax
For Tax Years 2015 - 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

Company did not have standing to request a refund claim for sales tax paid by a former 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 sales tax was erroneously paid to the Department, and thus filed a refund claim. The Department denied Taxpayer's refund claim in a letter dated April 3, 2018. 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.

At issue in the refund claim is sales tax paid on utilities. The utilities are in an individual's name, not the company's name. In the protest at hand, Taxpayer is the company. Given these facts the Department's denial letter stated in relevant part:

Utility bills submitted are not in the name of [Taxpayer] LLC.

The refund statute is IC § 6-8.1-9-1, which states in relevant 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.

Taxpayer's protest letter states that "[a]lthough the [Utility Company] invoices in question are in the name of one of the original shareholders, the invoices are in fact paid by the corporation." To that end, Taxpayer provided a copy of a "Bank Statement" that had a payment amount that was the same as one of the utility bills. Taxpayer further states that the utility "invoices in question were paid by the corporation, the claim for refund was properly filed on behalf of [Taxpayer]. The protest letter also states that "natural gas purchased was used for an exempt purpose as evidenced by the utility study previously submitted to the Department." Taxpayer merely asserts its conclusion that it can claim the refund; Taxpayer does not cite to any statutes for its position.

At the hearing Taxpayer's representative stated that the specific individual shareholder that the utility bill is in the name of is, in fact, no longer a shareholder. Taxpayer's argument is, in effect, that the distinction between it as an LLC and the former individual shareholder should not preclude Taxpayer from receiving a *sales tax* refund that is in the name of the former shareholder. The Department notes that the disregarding of the distinction between a business entity and a shareholder 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).

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 former 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" since the bill is in the former shareholder's name; thus Taxpayer does not have standing to request the refund.

FINDING

Taxpayer's protest is denied.

May 31, 2018

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