

DEPARTMENT OF STATE REVENUE

04-20180816R.ODR

**Final Order Denying Refund: 04-20180816R
Sales and Use Tax
For Tax Year January 2014-August 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's refund was properly denied because it did not provide sufficient documentation to establish that it is a successor company. Neither did it provide proof that sales tax was originally paid. Finally it did not meet the statute of limitations to request a refund for the periods January 1-February 17, 2014.

ISSUE

I. Sales and Use Tax—Refund.

Authority: IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Medco Health Solutions, Inc. v. Indiana Dept. of Revenue*, 9 N.E.3d 263 (Ind. T.C. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. T.C. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. T.C. 2012); Instructions for Completing Form GA-110L.

Taxpayer protests the denial of its claim for refund.

STATEMENT OF FACTS

Taxpayer is an out-of-state company that operates in Indiana. Taxpayer filed a Claim for Refund (GA-110L) with the Indiana Department of Revenue ("Department") on February 17, 2017. Taxpayer's claim was denied in part and granted in part. Taxpayer protests the refund denial and requested a final determination without a hearing. Thus, this Final Order Denying Refund is based on the information provided by Taxpayer.

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. A taxpayer is required to provide documentation explaining and supporting its challenge that the Department's denial is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

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.**

(Emphasis added).

Taxpayer protests the partial denial of its refund claim. The Department denied Taxpayer's refund in part for the following reasons: 1) some items were included in Taxpayer's bankruptcy proceeding and therefore no tax was paid on those items; 2) no sales tax was charged on the invoices in which the refund claim was requested; and 3) Taxpayer was not the proper entity to request refunds for periods prior to August 2015. Taxpayer did not protest the items denied pursuant to the bankruptcy proceedings.

In its protest letter, Taxpayer argues that "According to the policies and procedures for filing refund claims in the state of Indiana, any document (not listed in refund claim requirements) is needed to satisfy a requested claim amount, the reviewing auditor must request these items and add/adjust/attach them to the refund claim (This was not done with respect to correcting the denial portion)."

First, Taxpayer is mistaken in its belief that the Department **must** request documents from Taxpayer in order to substantiate its claim. Taxpayer, not only does not cite to any authority but the GA-110L form, relevant statutes, and Indiana Tax Court Cases state otherwise. As stated above, IC § 6-8.1-9-1 states that it is the Taxpayer's responsibility to set forth the reasons it is entitled to refund, this includes any documentation supporting its reasoning. In addition, the instructions for Completing Form GA-110L state:

Include a complete explanation of why the refund is due. **Attach ALL evidence to support your claim.** Examples but not all inclusive: invoices showing tax paid; copy of exemption certificate if it is an exempt customer; purchase agreement and contract for items such as software and warranties; proof of payment (credit invoice or canceled checks); utility bills showing meter number; use tax journal and any additional documentation to support your claim. Failure to attach ALL documentation with your claim may result in your claim being rejected or denied. **(Emphasis added).**

Finally, in *Medco Health Solutions, Inc. v. Indiana Dept. of Revenue*, the tax court stated that:

The Department has no legal method of generating a claim for refund on its own; rather, a claim for refund can only be initiated by a taxpayer pursuant to the procedure set forth in Indiana Code § 6-8.1-9-1. 45 Ind. Admin. Code 15-9-2(b) (2003). Indiana Code § 6-8.1-9-1 provides that "[i]f 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." Ind. Code § 6-8.1-9-1(a) (2003) (amended 2012) (emphasis added). "[I]n order to obtain the refund, the person must *file* the claim with the department within three (3) years after the latter of ... [t]he due date of the return [or t]he date of payment." *Id.* (emphasis added). **Furthermore, the claim must include certain information such as the amount of the refund to which the person is entitled, the reasons why the person is entitled to the refund, the tax period for which the overpayment is claimed, and the year and date of the overpayment.** *Id.*; 45 I.A.C. 15-9-2(d). Finally, a claim for refund generally must be filed on the form prescribed by the Department. See 45 I.A.C. 15-9-2(d); *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1298 (Ind. Tax Ct.1994) (explaining that although the taxpayer did not use the Department's prescribed form, its amended returns complete with explanatory statements qualified as claims for refund because they provided the Department with the information required by both Indiana Code § 6-8.1-9-1 and 45 I.A.C. 15-9-2). **(Emphasis added)** at 9 N.E.3d 263, 266 (Ind. T.C. 2014).

Thus, it is Taxpayer's burden to properly submit a refund claim with all the reasons it is entitled to the refund along with all supporting evidence, and the Department had no obligation or requirement to request documents from Taxpayer.

Second, Taxpayer's protest states that it is the successor company to the company which was in business prior to August 2015 and therefore all refunds are rightfully Taxpayer's to claim. Taxpayer has provided no documentation to establish that it is the successor company or any documentation showing that the previous company has given up to Taxpayer its right to refund. 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.

Furthermore, the Department must deny any refund claimed for periods between January 1, 2014 and February 17, 2014 due to the three year statute of limitations. Taxpayer had three years to request a refund and its claim was dated February 17, 2017; therefore, any claim prior to February 17, 2014 is outside the three years.

Finally, Taxpayer's refund claim was denied in part because the invoices it provided did not show that sales tax

was paid at the time of the transaction. In its protest, Taxpayer provided several invoices from its vendor. Upon review of the invoices provided, none of the invoices show that sales tax was paid at the time of transaction. Therefore, the Department cannot grant a refund of tax that was never paid.

Taxpayer has not shown that it was entitled to the remaining amount of its refund claim filed February 17, 2017. Taxpayer has not provided documentation to show that it is entitled to the refunds of the preceding company. Taxpayer also has not provided evidence that it paid sales tax on the invoices accompanying its refund claim. Therefore, Taxpayer has not sufficiently established its reasoning it is entitled to the full refund as required by IC § 6-8.1-9-1.

FINDING

Taxpayer's protest is denied.

June 28, 2018

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