

**Memorandum of Decision: 04-20181671R  
Gross Retail Tax  
For the 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 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**

Communications Company was entitled to a refund of sales tax because it did not collect the tax from its exempt customer but had itself inadvertently remitted the tax for an otherwise exempt transaction.

**ISSUE**

**I. Gross Retail Tax - Erroneous Remittance.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-1(b); IC § 6-2.5-4-1; IC § 6-2.5-5 et seq.; IC § 6-8.1-9-1(a); IC § 6-2.5-9-3.

Taxpayer argues that the Department erred in denying Taxpayer a refund of Indiana sales tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana communications service provider. Taxpayer also sells its customers communications equipment and supplies. Taxpayer regularly collects sales tax from its customers and remits those amounts to the Indiana Department of Revenue ("Department").

Taxpayer provided equipment, software, and associated supplies to one of its customers. Taxpayer billed the customer approximately \$12,000 in sales tax along with the cost of the materials. Taxpayer explains that "customer [then] advised Taxpayer that they were sales-tax exempt." According to Taxpayer, the customer paid for the equipment, software, and sales "but 'did NOT pay the sales tax that was on the invoices.'"

Taxpayer further explains that it nonetheless reported and paid the \$12,000 on its December 2017 Form ST-103 sales and use tax return.

Subsequently, Taxpayer submitted the Department a GA-110L "Claim for Refund" seeking a return of the \$12,000. The GA-110L return was received by the Department March 2018. In a letter dated May 2018, the Department responded and denied the \$12,000 refund. As explained in the Department's letter:

DOR has reviewed the claim and hereby denied the claim in full in the amount of [\$12,000] based upon the 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.

In other words, the Department concluded that it should have been the exempt customer which filed for and received the refund.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted and this Memorandum of Decision results.

**I. Gross Retail Tax - Erroneous Remittance.**

**DISCUSSION**

The issue is whether Taxpayer has established it is entitled to receive the \$12,000 sales tax refund.

The Department concluded that it was its exempt customer which had "standing" to claim and receive the refund.

In doing so, the Department cited to IC § 6-8.1-9-1(a) which provides in part:

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.

*(Emphasis added).*

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-5 et seq. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-1-2; IC § 6-2.5-4-1.

A retail merchant - such as Taxpayer - is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." IC § 6-2.5-9-3.

In the normal course of events, the customer pays sales tax and the vendor collects and remits the tax because it merely holds the tax in trust for the state. In those circumstances, IC § 6-8.1-9-1(a), the customer is the "person" entitled to obtain the refund and vendor - because it is merely an intermediary - the vendor has no claim for sales tax it collected on behalf of the state.

In Taxpayer's situation, its customer did not pay the \$12,000 claiming the transaction was exempt. As a result Taxpayer did not collect the \$12,000 from the customer and was not holding the \$12,000 in trust for the state. Taxpayer has provided documentation rigorously detailing the relevant circumstances including the customer's exemption certificate, and amended ST-103, its "recap of incorrect invoices," the original customer invoices, a letter from its customer stating that the customer did not pay sales to Taxpayer, and detailed bank records.

Taxpayer is right and the Department is wrong. Under IC § 6-8.1-9-1(a), Taxpayer is the "person" which paid the tax and is the "person" entitled to claim the refund. Based on all the available information, Taxpayer is entitled to the refund.

### **FINDING**

Taxpayer's protest is sustained.

December 18, 2018

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