

**Final Order Denying Refund: 04-20182024R
Gross Retail Tax
For the Years 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 Final Order Denying Refund.

HOLDING

Indiana State Agency was not entitled to a refund of sales tax paid on the purchase of hotel accommodations utilized by its employees because, although the cost of the hotel was paid by the State Agency, the rooms were booked in the employees' own names.

ISSUE

I. Gross Retail Tax - Indiana Government Agency Exemption.

Authority: IC § 6-2.5-4-4(a); IC § 6-2.5-5-16; *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); Sales Tax Information Bulletin 41 (January 1, 2014).

Taxpayer argues it is entitled to a refund of sales tax paid on the purchase of hotel accommodations on the ground it is an exempt governmental agency.

STATEMENT OF FACTS

Taxpayer is an Indiana state agency. Taxpayer arranged hotel accommodations for certain of its employees. According to Taxpayer, its employees provided the hotels a state issued credit card. In certain cases, the card listed Taxpayer's state agency name. In other cases, the card listed the employee's own name, but Taxpayer stated that these cards were issued by and on behalf of the appropriate state agency. There is no apparent disagreement that the cost of these accommodations was paid by the State of Indiana.

In each of the transactions at issue, the hotel charged the employee sales tax. Those sales tax charges were paid by the State of Indiana along with the cost of the rooms. Because Taxpayer believed it was entitled to a refund of the sales tax, Taxpayer submitted a claim for refund (GA-110L) seeking the return of the tax. The Indiana Department of Revenue ("Department") reviewed the claim and denied the refund request. In a letter dated September 2018, the Department explained its decision denying the refund.

In order to qualify for the exemption, the government organization must submit a properly completed exemption certificate and the room must be invoiced to and paid directly by the government entity. Payment made by a government employee that will be reimbursed by the government entity disqualifies the purchase from exemption.

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results.

I. Gross Retail Tax - Indiana Government Agency Exemption.

DISCUSSION

The issue is whether Taxpayer has established that it is entitled to a refund of sales tax paid on the purchase of hotel accommodations utilized by Taxpayer's employees.

Indiana's gross retail (sales) tax applies to renting or furnishing hotel rooms. IC § 6-2.5-4-4(a) states:

A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings,

or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person[.]

Indiana law provides an exemption for governmental entities. IC § 6-2.5-5-16 provides:

Transactions involving tangible personal property, *accommodations*, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, accommodations, commodities, or service:

- (1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under [IC 13-21](#) or [IC 13-9.5-2](#) (before its repeal); and
- (2) predominantly uses the property, accommodations, commodities, or service to perform its governmental functions.

(Emphasis added).

The Department has addressed the applicability of the exemption in Sales Tax Information Bulletin 41 (January 1, 2014), 20140129 Ind. Reg. 045140014NRA.

[T]he rental of ordinary hotel/motel transient (i.e., sleeping) rooms for periods of less than 30 consecutive days to Indiana state or local government entities is not subject to sales tax. In order to qualify for the exemption, the government organization must submit a properly completed exemption certificate and the room must be invoiced to and paid directly by the government entity. Payment made by a government employee that will be reimbursed by the government entity disqualifies the purchase from exemption.

In Taxpayer's case, the specific hotel transactions miss the mark because the hotel rooms were booked in the name of the individual holding the government issued credit card. Although the address listed on the card corresponds to the address of Taxpayer - the state agency - the hotel was correct in charging sales tax. Bearing in mind that tax exemptions "strictly construed against the taxpayer" *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974), and that the Department's interpretation of the exemption as set out in Sales Tax Information Bulletin 41 constitutes a "reasonable interpretation of the statute," Taxpayer's protest must be denied. *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

FINDING

Taxpayer's protest is respectfully denied.

October 31, 2018

Posted: 02/27/2019 by Legislative Services Agency
An [html](#) version of this document.