

Final Order Denying Refund: 04-20190102
Sales Tax
For the Tax Year 2018

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

Business filed a claim for refund of sales tax paid on the purchase of a truck. Review of the documentation on the purchase shows that the owner of the business purchased the truck, not the Business. Therefore, the wrong entity claimed the exemption. Refund was correctly denied.

ISSUE

I. Sales Tax–Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-27; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Panhandle Eastern Pipeline Co. v. Ind. Dept. of State Revenue* 741 N.E.2d 816 (Ind. Tax 2001); [45 IAC 2.2-5-61](#); *Black's Law Dictionary* (10th ed. 2014).

Taxpayer protests the denial of a claimed refund of sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana limited liability company ("LLC") which hauls property for others. LLC has a sole member and owner ("Owner"). Taxpayer filed a claim for refund of Indiana sales tax that was paid on the purchase of a truck in June of 2018. After review of the claim, the Indiana Department of Revenue ("Department") denied the claim for refund. Taxpayer filed a protest of that denial and requested refund review prior to holding an administrative hearing. After reviewing the materials sent in with the protest, the Department determined that there was no new documentation for the refund section to review. Therefore an administrative hearing was scheduled and conducted via telephone. Further facts will be supplied as required.

I. Sales Tax–Refund.

DISCUSSION

Taxpayer protests the denial of its claim for refund of sales tax paid on the purchase of a truck in June of 2018. Taxpayer states that it is a for-hire common carrier and therefore sales tax should not have been paid on the purchase of the truck it uses in hauling property for others. The Department denied the claim for refund. Taxpayer filed a protest of the denial and during the administrative hearing, reiterated its claim that the purchase was exempt and that sales tax on the purchase should be refunded.

The Department 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 the preceding audit, shall be entitled to deference.

First, the Department refers to IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) *The person who acquires property in a retail transaction is liable for the tax on the transaction* and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (*Emphasis added*).

Therefore, the person who buys property is the person who pays sales tax, unless the transaction is exempt in some manner.

Next, the Department refers to IC § 6-8.1-9-1(a), which states:

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.

Also, IC § 6-2.5-5-27 provides:

(a) *Except as provided in subsection (b), transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.*

(b) Except as provided in subsection (c), a transaction involving a natural gas product (as defined by [IC 6-6-2.5-16.5](#)) acquired:

- (1) after December 31, 2013, and before January 1, 2017; and
- (2) to fuel a motor vehicle used in providing public transportation for persons or property;

is not exempt from the state gross retail tax.

(c) Subsection (b) does not apply to transactions involving a natural gas product purchased by a public transportation corporation to fuel a motor vehicle used to provide public transportation for persons.

(Emphasis added).

Therefore, under IC § 6-2.5-5-27(a), a transaction involving tangible personal property is exempt from sales tax if the person who buys the tangible personal property directly uses it in providing public transportation of people or property.

Also, [45 IAC 2.2-5-61](#) provides in relevant part:

(a) The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.

(b) Definition: *Public Transportation. Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.*

....

(Emphasis added).

Finally, *Black's Law Dictionary* (10th ed. 2014) defines "common carrier" as:

A commercial enterprise that holds itself out to the public as offering to transport freight or passengers for a fee. A common carrier is generally required by law to transport freight or passengers without refusal if the approved fare or charge is paid. – Also termed public carrier.

(Emphasis added).

In this case, the tangible personal property in question is the truck. The public transportation exemption provided under IC § 6-2.5-5-27(a) and [45 IAC 2.2-5-61](#)(a) applies to a business which is engaged in public transportation

The Indiana Tax Court further defined the public transportation exemption in *Panhandle Eastern Pipeline Co. v. Ind. Dept. of State Revenue* 741 N.E.2d 816, 819 (Ind. Tax 2001):

The Court finds that the public transportation exemption provided by section 6-2.5-5-27 is an all-or-nothing exemption. If a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption.

The retail purchase order in this case shows that on June 26, 2018, Owner purchased the truck in question. LLC did not purchase the truck. While Owner is the sole member of LLC, Owner is not LLC. They are two different entities. Owner is a person and LLC is a commercial enterprise that holds itself out to the public as offering to transport freight or passengers for a fee. Owner is an individual person and did not haul any property in public transportation. LLC did the hauling in public transportation.

In conclusion, Owner bought the truck but Owner is not a common carrier and so is not eligible for the public transportation exemption provided by IC § 6-2.5-5-27(a) as explained by the tax court in *Panhandle Eastern Pipeline*. Therefore, Owner cannot claim a refund of sales tax since the purchase was not exempt to him. If LLC had purchased the truck, it could have claimed the public transportation exemption since it is a common carrier. LLC would still have to keep and provide documentation to establish that the truck was used predominantly (more than fifty percent of the time) in public transportation. However, LLC did not purchase the truck and cannot claim a refund of sales tax on something it did not purchase. Taxpayer's claim for refund of sales tax was properly denied.

FINDING

Taxpayer's protest is denied.

April 29, 2019

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