

Memorandum of Decision: 04-20190896R
Gross Retail Tax
For the Years 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 is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Indiana Company provided sufficient documentation to show it is entitled to a refund of sales tax.

ISSUE

I. Sales and Use Tax—Software.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-4-16.7.

Taxpayer protests the Department's refund denial.

STATEMENT OF FACTS

Taxpayer is a company that operates in Indiana. Taxpayer requested a refund of sales tax paid to the Indiana Department of Revenue ("Department"). The Department denied Taxpayer's request. Taxpayer protested the refund denial. An administrative hearing was conducted and this Memorandum of Decision results. Further facts will be presented as required.

I. Sales and Use Tax—Software.

DISCUSSION

Taxpayer requested a refund of sales tax paid to Indiana on software purchased by customer. The Department denied Taxpayer's request because Taxpayer did not provide any invoices. Taxpayer protested the denial because it states that it paid the sales tax to Indiana.

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 § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1 . . . or that is described in any other section of IC § 6-2.5-4." A retail transaction is defined as occurring when a person "acquires tangible personal property . . . and transfers that property to another person for consideration." IC § 6-2.5-4-1(b)(1)-(2).

Indiana specifically addresses prewritten software for sales tax purposes.

(a) Except as provided in subsection (b), a person is a retail merchant making a retail transaction when the person sells, rents, leases, or licenses for consideration the right to use prewritten computer software delivered electronically.

(b) A transaction in which an end user purchases, rents, leases, or licenses the right to remotely access prewritten computer software over the Internet, over private or public networks, or through wireless media:

(1) is not considered to be a transaction in which prewritten computer software is delivered electronically; and

(2) does not constitute a retail transaction.

IC § 6-2.5-4-16.7.

Taxpayer provided documentation to show that they are in fact selling software and that the software is being delivered electronically. Taxpayer also provided invoices and the sales tax payment made to the state. Thus, pursuant to IC § 6-2.5-4-16.7 the sale of software delivered electronically is not a retail transaction. Taxpayer has showed that its transactions meet the requirement of IC § 6-2.5-4-16.7 and its refund should therefore be granted.

FINDING

Taxpayer's protest is sustained.

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