

Memorandum of Decision: 04-20191203R
Gross Retail Tax
For the Years 2016 and 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

The Department agreed that Construction Materials Supplier provided sufficient information establishing that it was entitled to a refund of sales tax collected from its customers because Construction Materials Supplier refunded the tax originally collected from those exempt customers.

ISSUE

I. Gross Retail Tax - Refund Documentation.

Authority: IC § 6-2.5-6-13; IC § 6-2.5-6-14.1; IC § 6-2.5-8-8(a); IC § 6-8.1-5-4(a); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010).

Taxpayer argues that it presented the Department with documentation sufficient to verify that it is entitled to a refund of sales tax originally collected from some of its customers.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of supplying construction materials. Taxpayer operates multiple business locations and sells its products to both Indiana customers and customers in other states.

Taxpayer submitted a form GA-110L (Claim for Refund) dated March 2018 requesting the return of approximately \$5,800 of sales tax. Taxpayer claimed the refund on the ground that it previously refunded the \$5,800 amount to its Indiana customers.

In a letter dated June 2018, the Indiana Department of Revenue ("Department") requested that Taxpayer provide "an amended ST-103" or that Taxpayer make a correction on Taxpayer's IN-tax account. In a follow-up letter dated August 2018, the Department eventually denied the refund explaining that "Taxpayer failed to provide the requested information to support the validity of the refund claim."

Taxpayer disagreed with the decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Memorandum of Decision results.

I. Gross Retail Tax - Refund Documentation.

DISCUSSION

The issue is whether Taxpayer has provided information sufficient to establish that it is entitled to a refund of sales tax previously collected from its customers. Taxpayer explains those customers were exempt from sales tax, and Taxpayer credited the exempt customers with the amount of sales tax it now seeks.

As a business engaging in retail transactions, Taxpayer is required to maintain accurate financial records. "Every person subject to a listed tax must keep books and records so that the [D]epartment can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a).

In bringing a matter to protest such as that raised here by Taxpayer, the petitioner is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939

Further, "[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, interpretations of Indiana tax law contained within this decision are entitled to deference.

IC § 6-2.5-8-8(a) allows purchasers to acquire tangible personal property without paying sales tax:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

IC § 6-2.5-6-13 provides the grounds under which an exempt business or individual may seek a refund of sales tax.

A person is entitled to a refund from the department if: (1) a retail merchant erroneously or illegally collects state gross retail or use taxes under this article from the person; (2) the retail merchant remits the taxes to the department; (3) the retail merchant does not refund the taxes to the person; and (4) the person properly applies for the refund under the refund provisions contained in [IC 6-8.1-9](#).

IC § 6-2.5-6-13 is necessarily read in conjunction with IC § 6-2.5-6-14.1 which contains a provision allowing a merchant to recover sales tax refunded back to an exempt customer:

Notwithstanding the refund provisions of this article as incorporated from the gross income tax law ([IC 6-2.1](#), repealed), a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.

In support of its argument, Taxpayer provided copies of its original refund claim, its customers' ST-105 exemption certificates, customer credit memos, customer invoices, and a "refund claim schedule." The schedule listed each customer, the original invoice, the associated credit memo, and each customer's ST-105 exemption certificate.

The Department agrees that Taxpayer has documented that it meets the IC § 6-2.5-6-14.1 requirement sufficient to establish that it is now entitled to claim the refund of tax originally requested.

FINDING

Taxpayer's protest is sustained.

October 3, 2019

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