DEPARTMENT OF STATE REVENUE

04-20191294R.ODR

Final Order Denying Refund Number: 04-20191294R
Sales/Use Tax
For The 2017 Tax Year

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 Business was not entitled to additional refund because it failed to establish that its use of the dust collection system qualified for manufacturing exemption. As a result, the Indiana Department of Revenue properly denied Indiana Business's refund claim.

ISSUE

I. Sales and Use Tax - Refund - Exemption.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-2.5-5-3; IC § 6-2.5-13-1; IC § 6-8.1-9-1; 45 IAC 2.2-3-4; 45 IAC 2.2-3-14; 45 IAC 2.2-2-1; 45 IAC 2.2-5-3; 45 IAC 2.2-5-6; 45 IAC 2.2-5-8; 45 IAC 2.2-5-9; 45 IAC 2.2-5-10; 45 IAC 15-9-2; *Rhoade v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Mumma Bros. Drilling Co. v. Department of Revenue*, 411 N.E.2d 676 (Ind. Ct. App. 1980); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991); *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520 (Ind. 1983); Commissioner's Directive 13 (October 2015); Sales Tax Information Bulletin 55 (May 2012).

Taxpayer protests the partial refund denial of sales tax paid on one of its electricity meters.

STATEMENT OF FACTS

Taxpayer manufactures furniture in Indiana. In February 2019, Taxpayer filed a Form GA-110L, Claim for Refund (Claim Number 1984753). Taxpayer requested a refund of $23,148.94 sales tax paid on one meter (Meter Number xxxxxx904; "Meter at Issue").

The Indiana Department of Revenue ("Department") reviewed the claim and granted a portion of the refund. The Department denied $12,602.28. Taxpayer protested the refund denial, but asked that the Department issue a "Final determination without a hearing." This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales and Use Tax - Refund - Exemption.

DISCUSSION

Upon review, the Department denied a portion of Taxpayer's refund claim, in the amount of $12,602.28, based on the following reason:

> Taxpayer granted 45.56[percent] exemption for electric meter [Number xxxxxx904]. The dust collection system is not production use, it is used to collect dust and keep the work area cleaner and easier for the worker to breath.

Taxpayer disagreed, claiming that it was entitled to a full refund regarding the sales tax paid on the Meter at Issue. Thus, the issue in this case is whether the Department erred in denying Taxpayer's refund claim.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which, in relevant part, provides:

> 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. . . . [I]n 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 . . . 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.

45 IAC 15-9-2 further explains, in relevant part, that:

> (b) The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to IC 6-8.1-9-1.
> . . .
> (d) When filing a claim for refund with the department the taxpayer's claim shall set forth:
> (1) the amount of refund claimed;
> (2) **a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;**
> **(3) the tax period for which the overpayment is claimed; and**
> **(4) the year and date the overpayment was made.**
>
> The claim for refund shall be filed on a form prescribed by the department.
>
> (**Emphasis added**).

Thus, when a taxpayer determines it overpaid sales or use tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); 45 IAC 15-9-2; Commissioner's Directive 13 (October 2015), 20151125 Ind. Reg. 045150407NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." 45 IAC 15-9-2.

As to claim a refund of utility sales tax, the Department's Sales Tax Information Bulletin 55 (May 2012), 20120530 Ind. Reg. 045120251NRA, further provides, in relevant part:

> **SEPARATELY METERED OR PREDOMINATELY USED**
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> The exclusion from sales tax applies only if nontaxable utilities are separately metered and are predominately used by the purchaser for the excepted uses. "Predominately used" means more than 50[percent] of the utilities are consumed for the exempted use. Each meter is considered separately to determine whether the utility measured is exempt. If a user has multiple meters, they will not be aggregated together for a determination of predominate use, but each will be considered separately.
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> **FORMS**
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> To receive an exclusion, the taxpayer must complete Form ST-200. The form will be reviewed by the Department and, if the meter qualifies for the exemption, a validated ST-109 will be sent to the taxpayer to be forwarded to the utility company. The ST-109 is the only exemption form that can be accepted by a utility to exempt the utility from collecting the Indiana sales tax. Applications for exemptions (ST-200) are available from the Department of Revenue's website at www.in.gov/dor/3504.htm.
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> **PARTIAL EXEMPTIONS**
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> Any user who does not meet the predominate use test may still qualify for partial exemption under IC 6-2.5-5.1 for utilities that are directly consumed by the purchaser in the direct production of tangible personal property in the purchaser's business of manufacturing, processing, refining, repairing, mining, recycling, agriculture, horticulture, floriculture, or arboriculture. Fuel oil, gasoline, coal, and other types of fuel may also be exempt to the extent that they are directly consumed by the purchaser in direct production. All sales tax must first be paid to the utility, and a claim for refund with documentation must be submitted to the

Department using Form GA-110L within 36 months after the date of payment for the utility service.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana, which includes sales of motor vehicles. IC § 6-2.5-2-1(a); 45 IAC 2.2-2-1. A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible person property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana] . . . ." IC § 6-2.5-13-1(d)(1). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id*. "The retail merchant shall collect the tax as agent for the state." *Id*.

The Indiana use tax is imposed "on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is generally functionally equivalent to the sales tax. *See Rhoade v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Accordingly, all purchases of tangible personal property are taxable unless specifically exempted under Indiana law. 45 IAC 2.2-5-3(b); 45 IAC 2.2-5-6(a); 45 IAC 2.2-5-8(a); 45 IAC 2.2-5-9(a); 45 IAC 2.2-5-10(a). An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4 and 45 IAC 2.2-3-4. *See also* 45 IAC 2.2-3-14(1). There are various tax exemptions available outlined in IC 6-2.5-5 which are applicable to both sales tax and use tax. 45 IAC 2.2-3-14(2). A statute which provides a tax exemption, however, is 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). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id*. at 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). Thus, in order for Taxpayer to prevail on the issue it raised in its claim for a refund of sales tax, Taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (*citing UACC Midwest, Inc. v. Indiana Dep't of State Revenue,* 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Taxpayer claimed that its purchase and use of the dust collection system qualified for the manufacturing exemption. Although Taxpayer did not reference any Indiana law to support its protest, the relevant provision is outlined in IC § 6-2.5-5-3. Specifically, IC § 6-2.5-5-3(b), in relevant part, provides that:

> Except as provided in subsection (d), transactions involving **manufacturing** machinery, tools, and **equipment,** including material handling equipment purchased for the purpose of transporting materials into activities described in this subsection from an onsite location, are exempt from the state gross retail tax **if the person acquiring that property acquires it for direct use in the direct production,** manufacture, fabrication, assembly . . . **of other tangible personal property**. (**Emphasis added**).

The Legislature granted Indiana manufacturers a sales tax exemption for certain purchases, which are for "direct use in direct production, manufacture . . . of other tangible personal property." *Id.* In enacting the exemption, the Legislature clearly did not intend to create a global exemption for any and all equipment which a manufacturer purchases for use within or without its manufacturing facility. "Fairly read, the exemption was meant to apply to capital equipment that meets the 'double direct' test." *Mumma Bros. Drilling Co. v. Indiana Dep't of State Revenue*, 411 N.E.2d 676, 678 (Ind. Ct. App. 1980). The capital equipment "in order to be exempt, (1) must be directly used by the purchaser and (2) be used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of tangible personal property." *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 525 (Ind. 1983). "The test for directness requires the equipment to have an 'immediate link with the product being produced.'" *Id*. Accordingly, the sales tax exemption is applicable to that equipment which meets the "double direct" test and is "essential and integral" to the manufacture of taxpayer's tangible personal property. *General Motors Corp. v. Indiana Dep't. of State Revenue*, 578 N.E.2d 399, 401 (Ind.

Tax Ct. 1991). The application of Indiana's double-direct manufacturing exemptions often varies based on a determination of when a taxpayer's manufacturing process is considered to have begun and ended.

An exemption applies to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. 45 IAC 2.2-5-8(a). Machinery, tools, and equipment are directly used in the direct production process if they have an immediate effect on the article being produced. 45 IAC 2.2-5-8(c). A machine, tool, or piece of equipment has an immediate effect on the product being produced if it is an essential and integral part of an integrated process that produces the product. *Id*. An integrated process is one where the total production process is comprised of activities or steps that are functionally interrelated and where there is a flow of "work-in-process." 45 IAC 2.2-5-8(c), example 1.

45 IAC 2.2-5-8(k) describes direct production as the performance of an integrated series of operations which transforms the matter into a form, composition or character different from that in which it was acquired, and that the change must be substantial resulting in a transformation of the property into a different and distinct product.

45 IAC 2.2-5-8(d) states:

> Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

45 IAC 2.2-5-8(f) provides:

> (1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.
> (2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.
> (3) Transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process.
> (4) **Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, if the plants are not part of the same integrated production process**.
>
> (**Emphasis added**).

45 IAC 2.2-5-8(g) further states:

> "Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax. Component parts of a unit of machinery or equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of such manufacturing unit. **The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced". Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property**. (**Emphasis added**).

Additionally, 45 IAC 2.2-5-8(j) provides:

> **Machinery, tools, and equipment used in managerial sales, research, and development, or other non-operational activities, are not directly used in manufacturing and, therefore, are subject to tax**. This category includes, but is not limited to, tangible personal property used in any of the following activities: **management and administration**; selling and marketing; exhibition of manufactured or processed products; **safety** or fire prevention equipment which **does not have an immediate effect on the product**; space heating; **ventilation** and cooling for general temperature control; illumination; heating equipment for general temperature control; and shipping and loading. (**Emphasis added**).

Taxpayer in this instance did not provide supporting documentation to demonstrate its production process. Nor did Taxpayer offer any supporting documents to show that it directly used the dust collection system in its direct manufacturing process, i.e., having an immediate impact on the furniture it produced. Rather, Taxpayer's protest letter simply stated, in part, that:

> We are providing a copy of OSHA Safety and Health Information Bulletin that describes **the necessity of dust collection systems** in the manufacturing / production area . . . . (**Emphasis added**).

Upon review, Taxpayer's reliance on the "OSHA Safety and Health Information Bulletin" is misplaced. Clearly, it is important for Taxpayer to ensure its workers' safety and health. However, the issue under this protest is whether Taxpayer is entitled to a refund of tax pay on the dust collection system because it purchased and directly used the dust collection system during its manufacturing production. In other words, Taxpayer is required to demonstrate that the dust system had an immediate effect upon the article - namely, its furniture - being produced pursuant to 45 IAC 2.2-5-8. Taxpayer failed to do so.

FINDING

Taxpayer's protest is denied.

September 24, 2019

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