

DEPARTMENT OF STATE REVENUE

04-20191072R.ODR

**Order Denying Refund: 04-20191072R
Sales & Use Tax
For Tax Years 2015 and 2016**

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 was unable to establish that it was registered as a retail merchant or that its rental of forklifts was exempt from sales tax.

ISSUE**I. Sales Tax - Exempt Sales.**

Authority: IC § 6-2.5-2-1; IC § 6-2.5-8-8; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the imposition of sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana company involved in manufacturing. In November of 2018, Taxpayer filed a Form GA-110L claim for refund for transactions taking place over the past three years. Included with this form were invoices for each transaction on which a refund was claimed, as well as a Form ST-105 sales exemption certificate dated May 2015. After reviewing these documents, the Department denied refunds for the transactions occurring in 2015 and 2016, but granted the rest. The Department explained that the Taxpayer was not a registered retail merchant and did not have a sales tax account open with the Department until 2017. Taxpayer protested this partial denial and an administrative hearing was held, resulting in this memorandum. Further facts will be supplied as required.

I. Sales Tax - Exempt Sales.**DISCUSSION**

The Department found that Taxpayer was not eligible for an exemption in 2015 or 2016 because Taxpayer was not a retail merchant registered with Indiana during those years. But Taxpayer claims it was eligible for exemption because the transactions were completed by a prior company that engaged in the same business as Taxpayer during the tax years.

As a threshold issue, "[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.

Sales tax is imposed by 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.

The Indiana Legislature enacted several exemptions which allow certain transactions to occur tax free. When those transactions occur, the purchaser issues a sales tax exemption certificate instead of paying sales tax on the transaction. IC § 6-2.5-8-8(a). However, not all taxpayers are able to issue exemption certificates.

The following are the only persons authorized to issue exemption certificates:

- (1) Retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter.
- (2) Organizations which are exempt from the state gross retail tax under [IC 6-2.5-5-21](#), [IC 6-2.5-5-25](#), or [IC 6-2.5-5-26](#) and which are registered with the department under this chapter.
- (3) Persons who are exempt from the state gross retail tax under [IC 6-2.5-4-5](#) and who receive an exemption certificate from the department.
- (4) Other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

IC § 6-2.5-8-8(b).

At the hearing, Taxpayer provided its own retail merchant certificate, which was issued in 2017, and the retail merchant certificate for the prior company, which expired in 2012. But neither of these companies were registered as retail merchants during the tax years. Taxpayer failed to show that it was authorized to issue an exemption certificate under subsection (1) of IC § 6-2.5-8-8(b) and did not claim that it qualified under subsections (2), (3), or (4). Taxpayer has therefore failed to demonstrate that its transactions qualified as exempt during the tax years at issue.

FINDING

Taxpayer's protest is denied.

December 6, 2019

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