DEPARTMENT OF STATE REVENUE

04-20190270R.SMOD

Supplemental Memorandum of Decision: 04-20190270R
Gross Retail and Use Tax
For the Years 2014, 2015, 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

Telephone Company was not entitled to a refund of sales tax paid on the purchase of computer software purchased from multiple vendors and delivered to Telephone Company's Indiana location; Indiana's former "multiple point of use" statute was repealed in 2009, Indiana law provided a "temporary storage" exemption for use tax but not sales tax. Telephone Company was not entitled to an apportioned refund of sales tax paid on the purchase of software maintenance agreements based on the ratio of its in-state and out-of-state employees.

ISSUES

I. Gross Retail and Use Tax - Computer Software.

Authority: IC § 6-2.5-1-27; IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-3-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-3-2(e); IC §§ 6-2.5-5 et seq.; IC § 6-2.5-13-1; IC § 6-2.5-13-1(d)(1); IC § 6-2.5-13-1(d)(2); IC § 6-2.5-13-2 (repealed 2009); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind.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); *Rhoade v. Ind. 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); 45 IAC 2.2-3-14(2); 45 IAC 2.2-5-3(b); 45 IAC 2.2-5-54; 45 IAC 2.2-5-54(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).

Taxpayer argues that the Department erred in denying Taxpayer an apportioned refund of sales tax paid on the purchase of computer software on the ground that the software was employed by Taxpayer's personnel located both within Indiana and outside Indiana.

II. Gross Retail and Use Tax - Software Maintenance Agreements.

Authority: IC § 6-2.5-4-17; Sales Tax Information Bulletin 8 (December 2016).

Taxpayer maintains that it is entitled to a refund of sales/use tax paid on the purchase of software maintenance agreements.

III. Gross Retail and Use Tax - Exempt Service Transactions.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1(a); IC § 6-2.5-4-1(a); IC § 6-2.5-4-1(b).

Taxpayer states it is entitled to a refund of sales tax paid on exempt, service-only transactions.

IV. Gross Retail and Use Tax - Software as a Service.

Authority: IC § 6-2.5-13-1; Sales Tax Information Bulletin 8 (December 2016); Sales Tax Information Bulletin 8 (November 2011).

Taxpayer argues that it is entitled to a refund of sales tax paid on the purchase of software because the software consists of a cloud-based service.

V. Gross Retail and Use Tax - Exempt Telecommunications Equipment.

Authority: IC § 6-2.5-5-13; *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App.

1988); [45 IAC 2.2-5-20](#).

Taxpayer maintains it is entitled to a refund of sales tax paid on the price of a maintenance agreement because the agreement provides support for exempt central office telecommunications equipment.

STATEMENT OF FACTS

Taxpayer is an out-of-state communications company which conducts business in Indiana. Taxpayer provides data, Internet, network access, and local and long distance phone services to customers both in and outside Indiana. Taxpayer also sells video services, telecommunications equipment, and data center services.

Taxpayer submitted a refund request seeking the return of sales and use tax. The Indiana Department of Revenue ("Department") reviewed the refund claim and partially granted and partially denied that claim. Taxpayer disagreed with that portion of the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. Memorandum of Decision, 04-20181733R (February 13, 2019), 20190424 Ind. Reg. 045190227NRA (MOD) was issued February 13, 2019, which partially sustained and partially denied Taxpayer's protest.

Taxpayer disagreed with that portion of the MOD's finding which denied the additional refund and requested a rehearing. The request was granted based on additional documentation submitted, a second administrative hearing was conducted by telephone, and this Supplemental Memorandum of Decision results.

I. Gross Retail and Use Tax - Computer Software.

DISCUSSION

Taxpayer maintains it is entitled to a refund of sales/use tax on the ground that the software it purchased was either delivered to and used outside Indiana or that it is entitled to a refund of an apportioned portion of the tax because a number of the software users are located outside Indiana.

Taxpayer purchased software from the following vendors during the year indicated.

- Autodesk, Inc. 2016
- TIBCO Software, Inc. 2017
- Informatica Corporation 2015
- Oracle America, Inc. 2014
- Oracle America, Inc. 2014
- Oracle America, Inc. 2014
- Accenture LLP 2015
- Resolve Systems LLC 2016
- TIBCO Software, Inc. 2015
- Zones Corp. Solutions 2016
- Zones Corp. Solutions 2015
- RSA Security LLC 2015
- IBM Corporation 2015

Taxpayer explains that it purchased "electronically delivered [prewritten computer] software" which is used by its employees both inside and outside of Indiana. In support of its position that it is entitled to a partial refund of the sales tax paid at the time of the software purchase, Taxpayer cites to [45 IAC 2.2-5-54](#) which provides in part:

(a) Delivery to purchaser in Indiana. Sales of tangible personal property which are delivered to the purchaser in Indiana are subject to gross retail tax or use tax, except for certain sales of motor vehicles and aircraft.
(b) Delivery to purchaser in a state other than Indiana. Sales of tangible personal property which are delivered to the purchaser in a state other than Indiana are not subject to gross retail tax or use tax, provided the property is not intended to be subsequently used in Indiana.

For example, Taxpayer states that it purchased the Autodesk, Inc. 2016 software ("Autodesk software") but that the software is used primarily by its employees located outside Indiana. Specifically, Taxpayer explains that the Autodesk software is used 96 percent of the time by employees outside Indiana and 4 percent of the time by its Indiana employees. Taxpayer concludes that it is therefore entitled to a refund of 96 percent of the sales tax paid on Autodesk software.

As in the case of the Autodesk software, Taxpayer likewise claims a refund of 96 percent of the tax paid the remaining vendors because - in each case - the software is used 96 percent of the time by employees outside Indiana.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). "When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location." IC § 6-2.5-13-1(d)(1). "When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser . . . occurs . . . ." IC § 6-2.5-13-1(d)(2).

IC § 6-2.5-1-27 incorporates "prewritten computer software" in the definition of tangible personal property subject to tax:

> "Tangible personal property" means personal property that:
> (1) can be seen, weighed, measured, felt, or touched; or
> (2) is in any other manner perceptible to the senses.
> The term includes electricity, water, gas, steam, and prewritten computer software.

A person who acquires property in a retail transaction (a "retail purchaser") is liable for the tax on the transaction. IC § 6-2.5-2-1(b).

Indiana also imposes a complementary excise tax called "the use tax" 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).

In effect and practice, the use tax is generally functionally equivalent to the sales tax. See *Rhoade v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

As a general rule, all purchases of tangible personal property - including prewritten computer software - are subject to sales or use tax unless specifically exempted by statutes or regulations. 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). Various tax exemptions for gross retail tax (namely, sales tax) are outlined in IC §§ 6-2.5-5 et seq. which are applicable to both sales tax and use tax. 45 IAC 2.2-3-14(2).

A statute which provides any 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).

When a taxpayer challenges the taxability, the 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). 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." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Taxpayer purchased prewritten computer software from the vendors listed above. In the case of the Autodesk software, Taxpayer's documentation demonstrated that it paid a single price for software which was "delivered to" Taxpayer's Indiana business location and that it paid sales tax on the cost of that software. In the case of the TIBCO Software, the software was "shipped to" Taxpayer's Indiana business location. Taxpayer paid sales tax on the purchase price of the TIBCO software.

In the case of the Informatica software, Taxpayer paid a total price for the software which was "shipped to" Taxpayer's Indiana business location. Taxpayer likewise paid *sales tax* to Informatica on the price paid for the software.

In the case of the Oracle software, Taxpayer purchased multiple software packages, all of which were "shipped to" Taxpayer's Indiana business location. Taxpayer paid sales tax to Oracle on the price paid for each of the individual software packages.

The common thread running through these software purchases is that Taxpayer paid a single unitary price for each software package, the software was "shipped" to or "delivered" to Indiana, and Taxpayer paid each vendor sales tax when it paid for the software. The retail transactions concluded in Indiana upon delivery and Indiana sales tax was properly collected by sellers, the retail merchants at the retail transactions.

Taxpayer suggests that it is entitled to an apportioned refund of the sales tax paid the vendors. Although the software was shipped or delivered to Indiana Taxpayer cites to 45 IAC 2.2-5-54(b) which provides in small part that "[s]ales of tangible personal property which are delivered to the purchaser in a state other than Indiana for use in a state other than Indiana are not subject to gross retail tax or use tax . . . ." The problem is that there is no indication that any of the software was "delivered to [Taxpayer] in a state *other* than Indiana . . . ." Instead, the Department points to Indiana's general sourcing statute, IC § 6-2.5-13-1, which, in relevant part, provides:

> (d) The **retail sale**, excluding lease or rental, **of a product shall be sourced** as follows:
> (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
> (2) When the product is not received by the purchaser at a business location of the seller, **the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller**. (**Emphasis added**).

Taxpayer cannot rely on 45 IAC 2.2-5-54(b) because its documentation showed that the software was delivered or shipped to Indiana. Taxpayer also cannot rely on Indiana's former "Multiple Point of Use" (MPU) statute, IC § 6-2.5-13-2 because that statute was repealed in 2009. Moreover, Taxpayer cannot rely on the IC § 6-2.5-3-2(e) "temporary storage exemption" because that exemption only applies to "use tax" and Taxpayer is here asking for a refund of "sales tax" it paid to the vendors. Based on the supporting documentation submitted, sales tax was properly collected at the time of the transactions because Taxpayer's purchase did not qualify any statutory exemptions under Indiana law.

In addition, the Department questions whether the taxable value of the software can be "sliced and diced" based on the geographically proportionate location of the ultimate users, namely employees, of that software when Taxpayer is the purchaser and typically paid a unitary price for each software package. It is Taxpayer who exercised its "right or power of ownership over" the above-mentioned prewritten software, e.g. tangible personal property. Because the software is ultimately accessed by Taxpayer's users in multiple locations, the Department finds no support for the proposition that Taxpayer can now reallocate the unitary sales tax charge for software based on the ultimate number of software users located within and outside Indiana.

<div align="center">FINDING</div>

Taxpayer's protest is respectfully denied.

II. Gross Retail and Use Tax - Software Maintenance Agreements.

<div align="center">DISCUSSION</div>

Taxpayer argues that it is entitled to an apportioned refund of sales/use tax paid on the cost of software maintenance agreements. Taxpayer purchased software maintenance agreements from the following vendors during the years designated and in the order provided by Taxpayer:

- Autodesk, Inc. 2016
- TIBCO Software, Inc. 2017
- Informatica Corporation 2015
- Oracle America, Inc. 2014
- Oracle America, Inc. 2014
- Oracle America, Inc. 2014
- NETSCOUT/Tektronic 2016
- TIBCO Software, Inc. 2016
- Accunet Solutions, Inc. 2015

• ORASI Software, Inc. 2017
• Integrated Data Storage 2015
• TIBCO Software, Inc. 2016

Taxpayer states that it is entitled to an apportioned refund of sales or use tax paid on the purchase of software maintenance agreements based on a comparison of the number of its in-state and its out-of-state employees.

For example, Taxpayer states that it purchased a "maintenance contract" from Autodesk. Taxpayer states the agreement called for "updates and upgrades" of software which is used by employees located outside Indiana and inside Indiana. Taxpayer explains that the software - subject to this maintenance agreement - is used 96 percent of the time by employees outside Indiana and 4 percent of the time by employees inside Indiana. Taxpayer concludes that it is entitled to a refund of 96 percent of the sales tax Taxpayer paid Autodesk for this maintenance agreement.

Similarly, Taxpayer purchased a "maintenance contract" from TIBCO. Taxpayer states that the TIBCO agreement calls for "updates and upgrades" to software which is used by employers located outside Indiana and inside Indiana. Taxpayer explains that the software - subject to this agreement - is used 96 percent of the time by employees outside Indiana and 4 percent of the time by employees inside Indiana. Taxpayer concludes that it is entitled to a refund of 96 percent of the sales tax Taxpayer paid TIBCO for this agreement.

As explained by Taxpayer, it "requests the apportionment of computer software maintenance agreements and a refund for the services and software updates and upgrades that were delivered outside [Indiana]."

Indiana law, IC § 6-2.5-4-17, provides:

A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software. (*Effective July 1, 2010*).

Going forward, and for Taxpayer's future reference, the Department notes that the most recent version of Sales Tax Information Bulletin 8 (December 2016), 20170125 Ind. Reg. 045170026NRA, states in small part:

A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software. These contracts are therefore subject to sales tax.

In this case, Taxpayer is paying for software maintenance agreements in order to maintain and update software used by Taxpayer's in-state and out-of-state employees. Taxpayer states that it is entitled to rely on what is essentially a "multiple point of use" standard to apportion the sales tax between its in-state employees and out-of-state employees because the underlying software is used with both sets of employees. However, in the case of these unitary taxable transactions, there is simply no avenue by which the tax liability is apportionable based on the relative number of in-state and out-of-state employees who access the software.

FINDING

Taxpayer's protest is respectfully denied.

III. Gross Retail and Use Tax - Exempt Service Transactions.

DISCUSSION

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. 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." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires *tangible personal property* for the purpose of resale; and (2) transfers that property to another person for consideration." (*Emphasis added*).

A transaction subject to the state's sales tax necessarily involves the transfer of "tangible personal property."

Taxpayer states that it paid an invoice dated October 1, 2014, for $249,172 to "Michael Kinder & Sons, Inc." Taxpayer states that the invoice was "for contractor labor" which included only "general construction work and

electrical work including excavation and boring." Taxpayer asks for a refund of the sales tax paid on this invoice because the price paid was for exempt services.

Taxpayer points to another invoice from the same vendor but dated July 1, 2015, for $176,786 and that this invoice was only for "building maintenance labor." Taxpayer asks for a refund of the sales tax paid on this particular invoice because the price paid Kinder was for exempt services.

Taxpayer points to a third invoice from Oracle America dated February 24, 2016, which Taxpayer describes as an exempt "Systems Reinstatement Fee" costing $94,157. Taxpayer asks for a refund of the sales tax paid Oracle on this invoice because the price paid was not for the underlying software maintenance agreement but consisted of an exempt service fee. Taxpayer states that the February charge was "not for the provision of the support itself but rather to reinstate [Taxpayer's] access to the support."

The "Michael Kinder & Sons, Inc." invoices are ambiguous. The second Kinder invoice was the "price to supply all labor, materials, equipment . . . ." The first Kinder does not provide any information as to the nature of the transaction. On its face, the first invoice simply states that it was payment for Project 2357022 but gives no indication that Taxpayer was paying for only labor or - as in the second - "materials and equipment." In either case, it is not possible to conclude that Taxpayer has established that Taxpayer is entitled to a refund of the sales tax charged.

The Oracle invoice is bifurcated. The first charge listed is for computer support while the second charge is a "systems reinstatement fee." Based on Taxpayer's explanation and the documentation provided, the Department is prepared to agree that the reinstatement fee is an exempt service fee and that Taxpayer is entitled to a refund of the sales tax it paid Oracle on that second charge.

FINDING

Taxpayer's protest is denied in part and sustained in part. Taxpayer is entitled to a refund of tax paid to Oracle to reinstate its maintenance agreement.

IV. Gross Retail and Use Tax - Software as a Service.

DISCUSSION

Taxpayer paid sales tax on a payment to SPRINGCM Inc. Taxpayer argues it is entitled to a refund of this tax because the 2017 payment represented an "installment [for] 1/3 of Professional CM Level Licenses . . ." Taxpayer believes the installment payment is exempt because it "is purchasing SaaS and is not transferred [] software." Taxpayer explains it "does not control or possess the software or the server . . . and is not subject to Indiana sales tax."

Taxpayer documented its request by providing a copy of the SPRINGCM invoice which details payment for 3,000 software licenses and the right to affix 4,500 electronic signatures to Taxpayer's documents.

In support of its argument, Taxpayer cites to Sales Tax Information Bulletin 8 (December 2016), 20170125 Ind. Reg. 045170026NRA, which explains that SaaS (Software as a Service) "is defined as a service provider hosting software applications over the internet for a customer."

The 2016 Information Bulletin explains:

As of July 1, 2018, prewritten computer software sold, rented, leased, or licensed for consideration that is remotely accessed over the internet, over private or public networks, or through wireless media, is not considered an electronic transfer of computer software and is not considered a retail transaction. In other words, transactions for prewritten computer software remotely accessed from a hosted computer or server or through a pool of shared resources from multiple computers and servers ("cloud computing"), without having to download the software to the user's computer, are not considered retail transactions, and therefore the purchase, rental, lease, or license of that software is not subject to Indiana sales or use tax.

However, the Bulletin also provides:

[T]ransactions involving remotely accessed software occurring prior to July 1, 2018, will need to be analyzed using guidance published in the prior version of this bulletin.

Since Taxpayer paid the invoice in 2017, the Department refers here to Sales Tax Information Bulletin 8 (November 2011), 20111228 Ind. Reg. 045110765NRA, which provides:

> Prewritten computer software maintained on computer servers outside of Indiana also is subject to tax when accessed electronically via the Internet (i.e., "cloud computing"). The accessing of prewritten computer software by Indiana residents constitutes a transfer of the software because the customers gain constructive possession and the right to use, control, or direct the use of the software.

Taxpayer documented its request by providing a copy of the SPRINGCM invoice which details payment for 3,000 software licenses and the right to affix 4,500 electronic signatures. Whether or not the "cloud based" remotely accessed software is or is not subject to sales/use tax depends on whether a taxpayer is paying for the right to access software or whether it is paying for an ownership interest in the software.

In this case, the bulletin is clear; remotely accessed computer software is "tangible personal property" and subject to Indiana's sales/use tax. Equally clear is IC § 6-2.5-13-1(d)(1) which provides that "[w]hen the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location." IC § 6-2.5-13-1(d)(1). In this case, the Department does not agree that the payment to SPRINGCM is exempt from Indiana's sales tax.

FINDING

Taxpayer's protest is respectfully denied.

V. Gross Retail and Use Tax - Exempt Telecommunications Equipment.

DISCUSSION

Taxpayer argues it is entitled to a refund of sales tax paid to Elemental Technologies on the ground that the maintenance agreement it bought provides for support of software used in one of its central telecommunications offices. In support of its position, Taxpayer cites to IC § 6-2.5-5-13 which provides:

> Transactions involving tangible personal property are exempt from the state gross retail tax, if:
> (1) the property is:
> (A) classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission;
> (B) mobile telecommunications switching office equipment, radio or microwave transmitting or receiving equipment, including, without limitation, towers, antennae, and property that perform a function similar to the function performed by any of the property described in clause (A); or
> (C) a part of a national, regional, or local headend or similar facility operated by a person furnishing video services, cable radio services, satellite television or radio services, or Internet access services; and
> (2) the person acquiring the property:
> (A) furnishes or sells intrastate telecommunication service in a retail transaction described in IC 6-2.5-4-6; or
> (B) uses the property to furnish: (i) video services or Internet access services; or (ii) VOIP services. (*Effective July 1, 2009*).

The Department's regulation, 45 IAC 2.2-5-20, outlines in detail the numerous items which are classified as "Central Office Equipment" including everything from batteries to desks to aisle lighting equipment.

Elemental Technologies provides Taxpayer with software utilized in processing and delivering video. Specifically, Taxpayer paid Elemental for support of the software. The agreement provides Taxpayer technical support, phone support, email technical support.

Taxpayer does not argue that the maintenance agreement is exempt because the agreement does not call for "updates or upgrades to computer software" but because the software here itself is employed exclusively in Taxpayer's central telecommunications offices. Taxpayer's assertion may well be correct but there is no information or documentation establishing where this video processing software is utilized. In addition, even if the software is located within one of Taxpayer's central office locations, Taxpayer has not established a logical link

between any equipment - such as software - which is located in a central office and a maintenance agreement which maintains that software.

Taxpayer also seeks a refund of sales tax paid to General DataTech LP on two 2016 invoices. Taxpayer states that the equipment purchased from General DataTech is utilized in its general telecommunications offices. In the case of the two DataTech invoices, the Department is prepared to agree that the purchase of the technical hardware listed is exempt equipment intended for deployment in Taxpayer's telecommunications offices.

FINDING

Taxpayer's protest is denied in part and sustained in part.

SUMMARY

The Department agrees that Taxpayer has established it is entitled to a refund of sales tax paid Oracle for the "reinstatement" fee and the sales tax paid General DataTech for hardware utilized in its central telecommunications equipment.

December 4, 2019

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