

Final Order Denying Refund: 04-20191495R
Gross Retail Tax
For the Year 2016 through 2019

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HOLDING

Indiana Manufacturer was not entitled to a refund of sales tax paid on the purchase of natural gas because both Indiana Manufacturer and the Department's representative erred in initially concluding that natural gas delivery charges were not subject to Indiana's sales tax.

ISSUE

I. Gross Retail Tax - Utility Delivery Charges.

Authority: IC § 6-2.5-1-5(a); IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-5-5.1(a); IC § 6-2.5-5.

Taxpayer argues that the Department erred in denying Taxpayer a refund of sales tax paid on the price charged for the delivery of natural gas utilities.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer. Taxpayer submitted a refund request (GA-110L) asking for the return of approximately \$2,000 in sales tax originally paid on the purchase of natural gas utilities.

On its refund claim, Taxpayer explained that it was entitled to the refund "[d]ue to the Department's determination that gas transportation services are not subject to sales tax." Taxpayer further explained that Vectren, its natural gas provider, had "discontinued charging sales tax effective June, 2019. [Taxpayer] has been paying sales tax for this service for years until this effective date, and is filing for a refund for the allowed 36 month period."

The Department reviewed Taxpayer's request and denied the refund. Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results.

I. Gross Retail Tax - Utility Delivery Charges.

DISCUSSION

The issue is whether Taxpayer has provided sufficient documentation to establish that it is entitled to a refund of sales tax paid on the purchase of natural gas utilities.

Indiana sales tax is imposed pursuant to 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.

Indiana law subjects natural gas to sales tax by classifying natural gas as "tangible personal property." IC § 6-2.5-1-27. IC § 6-2.5-5-5.1(a) states:

As used in this section, **"tangible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam heat.**

(Emphasis added).

Taxpayer points to the July 2019 letter received from Vectren. The Vectren letter explained that the price its customers paid for transporting natural gas is not subject to sales tax, that Vectren is no longer charging sales tax on those transportation charges, and suggesting that its natural gas customers may be eligible for a refund.

According to Vectren, it was the Department of Revenue which "determined that Vectren's charges for the provision of gas transportation service are not subject to sales tax." However, Indiana law does not support Taxpayer's, Vectren's, nor what is purported to be the Department's conclusion.

IC § 6-2.5-1-5(a) further provides in part as follows:

Except as provided in subsection (b), "gross retail income" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) *delivery charges*

(Emphasis added).

Various statutory sales and use tax exemptions are available under IC § 6-2.5-5. However, neither Vectren nor Taxpayer have provided the statutory basis supporting the proposition that natural gas delivery charges are exempt from sales tax and the Department will not here craft an exemption for which there is no basis in law.

FINDING

Taxpayer's protest is respectfully denied.

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