DEPARTMENT OF STATE REVENUE

04-20191551R.MOD
04-20191552R.MOD

Memorandum of Decision Number: 04-20191551R and 04-20191552R
Sales and Use Tax
For the Tax Periods August, September, October, and November 2018

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

Out-of-State Business demonstrated that it was entitled to a refund because it overpaid the sales tax.

ISSUE

I. Sales and Use Tax - Refund.

Authority: IC § 6-2.5-6-1; IC § 6-8.1-9-1; 45 IAC 15-9-2.

Taxpayer protests the refund denial of sales tax which it overpaid.

STATEMENT OF FACTS

Taxpayer is an out-of-state company. In 2018, Taxpayer acquired two additional retail stores (Location Numbers 076 and 077; "Locations") operating in Indiana; in turn, it applied for sales tax accounts for these two Locations. The Revenue Processing System of the Indiana Department of Revenue ("Department") created two separate sales tax accounts for these two Locations to report their sales tax due accordingly.

Unbeknown to the Department, Taxpayer elected to include sales from both Locations in its consolidated sales tax returns when it reported monthly sales tax due and remitted the tax by means of the INTax website ("INTax"), an electronic filing system, established by the Indiana Department of Revenue ("Department") pursuant to the statutory mandate, IC § 6-2.5-6-1.

In 2019, the Department issued several proposed assessments based on "best information available" to the Department ("BIA assessments") concerning both Locations for the tax periods August, September, October, and November 2018 ("Tax Periods at Issue"). Taxpayer paid the BIA assessments in order to renew its business licenses. Subsequently, Taxpayer filed two (2) separate Form GA-110L, Claim for Refund (Claim Numbers 2045764 and 2045766), requesting the Department refund Taxpayer's overpayments for both Locations.

The Department reviewed and denied both refund based on the following reason:

> The claim for refund did not include information necessary for the Department to verify the claim. We contacted you August 23rd, 2019 advising that additional supporting documentation must be received by this office within thirty (30) days. We did not receive the additional documentation necessary to process the claim.

Taxpayer protested both refund denials providing additional documents to support its refund claims. A phone hearing was conducted and this final determination results. Additional information will be provided as necessary.

I. Sales and Use Tax - Refund.

DISCUSSION

The Department denied Taxpayer's refund claims on the ground that the Department did not receive the necessary documents from Taxpayer to support its refund claims.

Taxpayer disagreed. Taxpayer stated that by means of the Department's INTax, it timely reported and remitted the tax due in its consolidated sales tax returns for the Tax Periods at Issue. Taxpayer asserted that the Department erroneously issued the BIA assessments for the same tax periods. Taxpayer further asserted that in

March 2019, it was required to first pay those BIA assessments in order to renew its Indiana business licenses for its other store locations. Taxpayer thus maintained that it overpaid the taxes and was entitled to the refund of those overpayments.

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.
> . . . 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.

In this instance, to support its protest, Taxpayer provided additional documents, demonstrating that both Locations were included in its consolidated sales tax returns for the Tax Periods at Issue. Taxpayer further provided documents demonstrating that it paid the second time in March 2019 to resolve the BIA assessments. Thus, given the totality of the circumstances and for this time only, the Department is prepared to agree that Taxpayer is entitled to the full refund claimed under Claim Numbers 2045764 and 2045766.

Finally, it should be noted that Taxpayer is required to promptly provide documents requested to substantiate any refund request. Without sufficient documents to support its refund request, the Department properly denied the refund requests initially because it was not able to determine the proper amount of the tax due. Going forward, if similar circumstances arise in the future, Taxpayer will be responsible for the delay and the potential denial of its refund claims.

FINDING

Taxpayer's protest is sustained for this time only.

January 28, 2020

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