

Final Order Denying Refund: 04-20191485R
Indiana Sales Tax
For Tax Period March 31, 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. 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 Company could not show that their protested transactions are exempt from sales tax, therefore the Department was correct in denying their refund claim.

ISSUE

I. Sales Tax - Exempt Sales.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-2.5-5; [45 IAC 2.2-8-12](#); [45 IAC 2.2-2-1](#).

Taxpayer protests the Department's refund denial of sales tax paid on listed transactions.

STATEMENT OF FACTS

Taxpayer is an Indiana company. Taxpayer made several purchases from vendors for the tax period at issue. Taxpayer determined that it should not have paid sales tax on those purchases and requested a refund of sales tax paid. The Indiana Department of Revenue ("Revenue") denied Taxpayer's claim stating, "Taxpayer filed a zero sale/use tax return for March 2019 therefore no overpayment to refund [*sic*]".

Taxpayer protested the Department's refund denial. Taxpayer requested a Final Determination without an administrative hearing. Thus, Taxpayer waived its right to an administrative hearing. This Final Order Denying Refund results based on the additional evidence provided by Taxpayer and the information contained within the protest file. Further facts will be supplied as required.

I. Sales Tax - Exempt Sales.

DISCUSSION

Indiana imposes a sales tax on retail transactions made in Indiana. 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 personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). The retail merchant is responsible for collecting the tax "as agent for the state." *Id.*

The legislature has deemed it appropriate to allow a number of specific sales tax exemptions under IC § 6-2.5-5. If a purchaser claims its purchase is "exempt from the state gross retail [] tax[]" [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). "Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used by the purchaser for an exempt purpose." [45 IAC 2.2-8-12](#)(b). "An exemption certificate issued by a purchaser **shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.**" [45 IAC 2.2-8-12](#)(f) (**emphasis added**). "A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail . . . tax on that purchase." IC § 6-2.5-8-8. Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

In this instance, Taxpayer is requesting a refund of sales tax paid to vendors at the time of purchase. Taxpayer provided the invoices for the transactions in questions. Some of the invoices have a specific line in which the vendors charged sales tax, however some invoices do not have an itemized line of sales tax charged. Regardless of this matter, Taxpayer has provided no documentation or evidence as to why these transactions are exempt from sales tax. In addition, Taxpayer did not provide any exemption certificates for these transactions. While the Department's original refund denial was due to our system not showing an overpayment, Taxpayer's refund remains denied because they could not show that the purchases are exempt from sales tax.

FINDING

Taxpayer's protest is denied.

March 10, 2020

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