

Memorandum of Decision Number: 04-20191559R
Sales/Use Tax
For The 2017 - 2019 Tax Years

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 determination.

HOLDING

Indiana Business was entitled to the refund because it established that it predominately used its electricity in producing food for sale; as a result, its use of electricity was fully exempt.

ISSUE

I. Sales and Use Tax - Refund - Exemption.

Authority: IC § 6-8.1-9-1; [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015); Sales Tax Information Bulletin 55 (May 2012).

Taxpayer protests the partial refund denial of sales tax paid on its electricity meter.

STATEMENT OF FACTS

Taxpayer is a restaurant doing business in Indiana. In 2019, Taxpayer filed a Form GA-110L, Claim for Refund (Claim Number 2045419). Taxpayer requested a refund of \$5,438.31 sales tax paid during 2017 - 2019.

The Indiana Department of Revenue ("Department") reviewed and granted a partial refund claim based on Taxpayer's actual use of electricity during its food production. Taxpayer protested the partial refund denial, in the amount of \$ 2,421.13. This final determination results. Further facts will be provided as necessary.

I. Sales and Use Tax - Refund - Exemption.

DISCUSSION

Upon review, the Department granted 44.52 percent exemption based on Taxpayer's actual use of electricity during its production and denied the remainder of its refund.

Taxpayer disagreed, claiming that it was entitled to a full refund regarding the sales tax paid on the Meter at Issue because it predominately used the electricity to produce food for sale. Thus, the issue in this case is whether Taxpayer demonstrated that it was entitled to a 100 percent exemption on electricity it purchased because its use satisfied the predominate use standard.

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.

For purposes of this section, the due date for a return filed for the state gross retail or use tax . . . is the end of the calendar year which contains the taxable period for which the return is filed. 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.

Thus, when a taxpayer determines it overpaid sales or use tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015), 20151125 Ind. Reg. 045150407NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#)(d).

As to claim a refund of utility sales tax, the Department's Sales Tax Information Bulletin 55 (May 2012), 20120530 Ind. Reg. 045120251NRA, further provides, in relevant part:

SEPARATELY METERED OR PREDOMINATELY USED

The exclusion from sales tax applies only if nontaxable utilities are separately metered and are predominately used by the purchaser for the excepted uses. "Predominately used" means more than 50[percent] of the utilities are consumed for the exempted use. Each meter is considered separately to determine whether the utility measured is exempt. If a user has multiple meters, they will not be aggregated together for a determination of predominate use, but each will be considered separately.

FORMS

To receive an exclusion, the taxpayer must complete Form ST-200. The form will be reviewed by the Department and, if the meter qualifies for the exemption, a validated ST-109 will be sent to the taxpayer to be forwarded to the utility company. The ST-109 is the only exemption form that can be accepted by a utility to exempt the utility from collecting the Indiana sales tax. Applications for exemptions (ST-200) are available from the Department of Revenue's website at www.in.gov/dor/3504.htm.

PARTIAL EXEMPTIONS

Any user who does not meet the predominate use test may still qualify for partial exemption under [IC 6-2.5-5.1](#) for utilities that are directly consumed by the purchaser in the direct production of tangible personal property in the purchaser's business of manufacturing, processing, refining, repairing, mining, recycling, agriculture, horticulture, floriculture, or arboriculture. Fuel oil, gasoline, coal, and other types of fuel may also be exempt to the extent that they are directly consumed by the purchaser in direct production. All sales tax must first be paid to the utility, and a claim for refund with documentation must be submitted to the Department using Form GA-110L within 36 months after the date of payment for the utility service.

Throughout the protest process, Taxpayer provided additional publicly verifiable documents to support its position that its use of electricity satisfied the predominant use standard. Upon review, the Department is prepared to agree that Taxpayer is entitled to the full refund and is prepared to grant Taxpayer the exemption certificate (Form ST-109) based on the above-mentioned reason regarding the Meter at Issue.

FINDING

Taxpayer's protest is sustained.

February 19, 2020

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