

Memorandum of Decision: 04-20191545R
Sales Tax
For the Tax Year 2019

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

Software consulting firm requested a refund of tax which it remitted prior to receiving payment on a transaction which eventually was cancelled. Taxpayer never collected tax from their customer, and no transaction actually occurred, therefore Taxpayer is due a refund.

ISSUE

I. Gross Retail Tax–Refund.

Authority: IC § 6-2.5-6-14.1; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer seeks a refund of sales tax it remitted on the sale of software which was never completed.

STATEMENT OF FACTS

Taxpayer is primarily a software consulting company who also sells software to be licensed by the customer. In January 2019, Taxpayer contracted to sell software to a customer and remitted to Indiana the projected sales tax on the transaction. That transaction, however, was never completed. No payment was made to Taxpayer for the software and no software was provided to the customer. Taxpayer filed a refund in April 2019 which the Indiana Department of Revenue ("Department") denied. Taxpayer filed a protest and an administrative hearing was held. This Memorandum of Decision results. Further facts will be supplied as necessary.

I. Gross Retail Tax–Refund.

DISCUSSION

Taxpayer requests a refund of the gross retail tax it remitted to the Department prior to its collection from a customer. Taxpayer claims it remitted the tax with its own money in anticipation of a transaction occurring which did not occur.

As an initial point, the Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the initial refund determination, shall be entitled to deference.

IC § 6-8.1-9-1(a) allows a person who has paid more tax than is due to file a claim for refund. Taxpayer in this case, however, is not the customer, but instead is a retail merchant entrusted to collect tax on behalf of the state on Indiana and remit that tax to the Department. IC § 6-2.5-6-14.1 explains when a retail merchant may be entitled to a refund of gross retail tax:

Notwithstanding the refund provisions of this article as incorporated from the gross income tax law, a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.

In this case, Taxpayer did not collect any funds from the customer, which means that any tax dollars initially thought to be owed by the customer remain with that customer. Taxpayer provided internal financial documents and communications with the customer in question showing that they did not receive any payment for the

software at issue in this case. The money Taxpayer remitted to the Department is essentially an overpayment in error, for which a refund was timely requested.

In this case, Taxpayer has refunded all taxes collected from customer, which happens to be none. Taxpayer therefore met the requirements under IC § 6-2.5-6-14.1. Its request for a refund of tax remitted from a transaction that did not actually occur is therefore granted.

FINDING

Taxpayer's protest is granted.

April 14, 2020

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