

DEPARTMENT OF STATE REVENUE

04-20191568R.ODR

**Final Order Denying Refund: 04-20191568R
Sales & Use Tax
For Tax Years 2015-2018**

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 Final Order Denying Refund.

HOLDING

Business was unable to support its utility exemption claim with sufficient evidence for the Department to determine its correctness. The refund claim is denied.

ISSUE

I. Sales Tax—Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-1; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-4-13](#); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015).

Taxpayer protests the denial of its claim for refund.

STATEMENT OF FACTS

Taxpayer is a company specializing in applying various spray coatings for commercial and manufacturing applications. In December, Taxpayer filed a GA-110L claim for refund of sales tax paid on its utility bills at an Indiana location in 2015 through 2018. Taxpayer claimed that its utilities were exempt from tax because they were predominantly used in manufacturing. This refund request was filed after that Indiana location was closed. The Indiana Department of Revenue ("Department") denied the refund claim because it could not confirm the accuracy of the Taxpayer's exemption percentage. Taxpayer subsequently appealed this denial. A telephonic administrative hearing was held and this Final Order Denying Refund results. Further facts will be supplied as required.

I. Sales Tax—Refund.

DISCUSSION

Taxpayer protests the denial of their sales tax refund claims for the 2015 through 2018 tax years. Taxpayer claims that the Department has enough information to confirm its exemption from sales tax.

As a preliminary matter, 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.

When a taxpayer determines it has overpaid a 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](#).

In applying any tax exemption, "[T]he general rule is that tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). A statute which provides a tax exemption, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly

within the exact letter of the law." *Id.* at 101.

Sales tax is imposed by 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.

Electricity and natural gas can be exempt from sales tax in certain circumstances outlined by IC § 6-2.5-5-1, which states in part:

- (a) As used in this section, "tangible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam heat.
- (b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

In this case, Taxpayer claims that it predominantly used utilities in an exempt manner, and was therefore entitled to the predominant use exemption found at [45 IAC 2.2-4-13](#), which states:

- (a) *In general, the furnishing of electricity, gas, water, steam, or steam heating services by public utilities to consumers is subject to tax.*
- (b) The gross receipt of every person engaged as a power subsidiary or a public utility derived from selling electrical energy, gas, water, or steam to consumers for direct use in direct manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#) shall not constitute gross retail income of a retail merchant received from a retail transaction. *Electrical energy, gas, water, or steam will only be considered directly used in direct production, manufacturing, mining, refining, oil or mineral extraction, irrigation, agriculture, or horticulture if the utilities would be exempt under [IC 6-2.5-5-5.1](#).*
- (c) Sales of public utility services or commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#), based on a single meter charge, flat rate charge, or other charge, are excepted if such services are separately metered or billed and will be used predominantly for the excepted purposes.
- (d) Sales of public utility services and commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, or horticulture, based on a single meter charge, flat rate charge, or other charge, which will be used for both excepted and nonexcepted purposes are taxable unless such services and commodities are used predominantly for excepted purposes.
- (e) *Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominantly for excepted purposes. Predominant use shall mean that more than fifty percent (50[percent]) of the utility services and commodities are consumed for excepted uses. (Emphasis added.)*

Along with their refund claim, Taxpayer provided Form ST-200 applications for utility sales tax exemptions and additional documentation. This included a statement about Taxpayer's manufacturing operation, calculations of sales tax paid, copies of utility bills, and documents titled "Electric Load Analysis" and "Gas Load Analysis". These analyses list various pieces of equipment that were once used at the Taxpayer's facility and provide the demanded power for each piece of equipment and their average yearly usage to determine an exemption percentage. After the hearing, Taxpayer also provided a diagram of the now-closed Indiana facility and paperwork from a similar facility in another state, showing that it was granted an exemption from utility sales tax by that state. Taxpayer also provided photos of the machinery it says was previously located at the Indiana facility.

As stated above, a Taxpayer is required to provide sufficient information so that the Department may review a claim for refund and determine the correctness of the claim. When reviewing the claimed refund prior to protest, the Department found insufficient information to confirm the equipment usage in the Taxpayer's Indiana facility. The Department could not inspect the equipment Taxpayer claimed was operating at its Indiana facility because it had been moved out of Indiana before the claim for refund was processed. Without evidence to confirm the equipment loads, power demand, or yearly usage by the Taxpayer, the Department was unable to determine the correctness of the Taxpayer's claims at that time.

The Department remains unable to determine the correctness of Taxpayer's claims in protest. The subsequently-provided photos, schematics of the Taxpayer's closed Indiana facility, and documents of Taxpayer's facility in another state do not provide the Department with support for the Taxpayer's claimed natural gas or electricity usage. The Department cannot confirm the load factor for any of the equipment listed in Taxpayer's analysis. The Department similarly cannot confirm how frequently any of the machinery listed by the Taxpayer was used during the tax years. Finally, the Department cannot confirm that the listed power demands for each piece of listed equipment were accurate.

Without evidence supporting the claimed load factor, power demand, or power usage figures for each piece of equipment, Taxpayer fails to demonstrate the correctness of its refund claim. Because exemption statutes are strictly construed in favor of taxation, the Department denies the Taxpayer's claim for refund.

FINDING

Taxpayer's protest is respectfully denied.

June 9, 2020

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