

DEPARTMENT OF STATE REVENUE

04-20200284R.MOD

Memorandum of Decision: 04-20200284R
Gross Retail and Use Tax
For the Tax Period July 2018 - June 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

Indiana restaurant was able to show that, despite its name being on the refund claim and sales tax exemption, but not the utility bill, the entity on the utility bill had apparent authority to act on Indiana restaurant's behalf and Indiana restaurant reimbursed them for utility payments. Thus, Indiana restaurant was entitled to the sales tax exemption and related refund claim.

ISSUE

I. Sales Tax - Exemption.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-1-27; IC § 6-2.5-5-5.1; IC § 6-2.5-5 *et. seq.*; [45 IAC 2.2-2-1](#); *Mynsberge vs. Indiana Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999).

Taxpayer, an Indiana restaurant, seeks a refund of sales tax paid on certain utilities purchases.

STATEMENT OF FACT

Taxpayer is an Indiana corporation which purchased an Indiana restaurant in July of 2018. In July of 2019, Taxpayer filed a Form ST-200, Utility Sales Tax Exemption Application with the Indiana Department of Revenue ("Department"). At the same time, Taxpayer filed a Claim for Refund ("GA-110L") claiming a refund of sales tax paid on utility purchases made between July 2018 to June of 2019.

In October of 2019, the Department granted Taxpayer's ST-200 and issued Taxpayer an Indiana Utility Sales Tax Exemption Certificate ("ST-109"). The ST-109 was forwarded to Taxpayer's utility provider who applied the exemption to Taxpayer's account. In November of 2019, Taxpayer received a denial letter in regard to its GA-110L. The letter stated that the claim was denied because the name on the utility account was not Taxpayer's name.

Taxpayer protested the denial of the GA-110L and an administrative hearing was held. This Memorandum of Decision results. Additional facts will be supplied as necessary.

I. Sales Tax - Exemption.

DISCUSSION

Taxpayer purchased a restaurant in July of 2018. In July of 2019, Taxpayer filed an ST-200 for the utility sales tax exemption as well as a GA-110L claiming a refund of utility sales tax it remitted from July 2018 to June of 2019. Though the Department originally granted Taxpayer's ST-200 and issued an ST-109, it later denied Taxpayer's GA-110L. The Department's reasoning was that the name on the utility account was not Taxpayer's name.

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). Tangible personal property includes electricity and gas. IC § 6-2.5-1-27(2). 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). That being said, Indiana law allows for certain sales tax exemptions under IC § 6-2.5-5 *et. seq.* The issue in this case is not whether Taxpayer's use of the utilities qualifies for exemption. Rather, the issue is an administrative one; does the absence of Taxpayer's name on the utility account preclude it from qualifying for the exemption?

There is no statutory requirement in Indiana that the name on a utility account match the name of the entity requesting an exemption for the use of its utility service. Rather, the requirement for exemption in this case is that the person acquiring the tangible personal property, or utility, uses it for an exempt purpose. IC § 6-2.5-5-5.1. This idea was furthered by the Indiana Tax Court in *Mynsberge vs. Indiana Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999). In that case Mynsberge leased buildings and equipment to Coppes, a manufacturer. Under the lease agreement, Coppes made monthly lease payments to Mynsberge as well as monthly payment of \$7,800 for electricity, which Coppes used in its manufacturing business. Under their agreement, if the utility bill was less than \$7,800, Mynsberge refunded the difference between the \$7,800 and the actual utility bill. Mynsberge was the entity billed for the electricity used by Coppes, thus, Mynsberge filed a claim for refund of sales tax it paid on these electricity purchases, which the Department denied. The Tax Court agreed with the denial, stating that the exemption did not apply to Mynsberge's purchases because he did not use the utilities for an exempt purpose. The court emphasized that the exemption statutes "speak[] in terms of the utility services . . . being 'used by the purchaser.'" *Id. at 636*. Notably, the Court pointed out "that had Coppes merely purchased the electricity . . . directly, the electricity would have [] been exempt. . . ." *Id. at 638*.

It is not uncommon for a taxpayer to purchase its utilities through another entity and there are a number of business reasons to do so. In such cases, the Department looks for proof that the taxpayer ultimately paid for the service. The Department also looks for a legal basis for the company listed on the utility bill to act as the agent for the taxpayer using the utilities and requesting the refund. The agency relationship can be inferred from a contract or memorandum between the parties. Further, common ownership can be interpreted as apparent authority for one entity to act on behalf of another.

In this instant case, Taxpayer is part of a family of companies, all of which are owned, at least in part, by a "parent" entity. This parent entity is 100 percent owned by one individual. This individual owns 51 percent of Taxpayer while his son owns the remaining 49 percent. The family of companies own and work from one central operating account. Parent company has an account with the utility company which all of its related entities use. Thus, while parent company's name was on the utility bills, Taxpayer's name was listed on the GA-110L and ST-200. Taxpayer was able to prove to the Department that not only did parent have apparent authority to purchase utilities on Taxpayer's behalf, but that Taxpayer reimbursed parent for those expenses. As such, Taxpayer's protest has been sustained.

FINDING

Taxpayer's protest is sustained.

October 13, 2020

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