

Memorandum of Decision: 04-20221062
Sales/use Tax
for the Tax Year 2021

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

Sole proprietor protested the denial of a refund claim where sole proprietor paid sales tax on purchases upon which the seller refused to accept sole proprietor's exemption certificate. Sole proprietor met her burden of proof.

ISSUE

I. Sales/Use Tax - Refund Claim.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-8; IC § 6-2.5-8-8; IC § 6-2.5-3-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoads v. Indiana Dept. of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002).

Taxpayer protests denial of refund regarding sales/use tax paid.

STATEMENT OF FACTS

Taxpayer is a sole proprietor that runs a retail business and filed a Claim for Refund with the Indiana Department of Revenue ("Department"). In a letter dated January 27, 2022, the Department denied the refund claim stating that there was "[n]o proof of payment" for the transaction at issue. Taxpayer, in turn, filed a "Protest Submission Form" requesting a "Final determination without a hearing." A determination without a hearing, as noted on the form, means Taxpayer waives the right to a hearing and that the Department will issue a written decision based upon the written protest and documentation provided with the protest. Additional facts will be provided as necessary.

I. Sales/Use Tax - Refund Claim.

DISCUSSION

Taxpayer's refund claim states that the refund is due because Taxpayer's exemption certificate was not accepted by the seller. Taxpayer's protest letter states that the "order was a split payment and due to items being on backorder, a portion of the total amount [plus] tax was not paid until 2022." Further Taxpayer states, "I am enclosing November and December statements to highlight the two transactions that were incurred in 2021. The breakdown of these payments (merchandise total and tax total) are detailed on the Order Confirmation[.]"

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. See e.g. *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Turning to Indiana's sale and use tax laws, Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax - called use tax - "imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See *Rhoads v. Indiana Dept. of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct.

2002).

As noted, Taxpayer states that the refund request is due because Taxpayer's exemption certificate was not accepted by the seller. IC § 6-2.5-8-8(a), in pertinent part, states that a person "who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax." Taxpayer is a retail merchant and purchased the items in question for resale, which is an exempt purchase under IC § 6-2.5-5-8(b). Taxpayer's protest letter states that "the tax amount to be refunded for period ended 12/31/2021 is only in the amount of \$9.03; as the remainder of the tax, \$10.49 was incurred in January 2022." The Department's refund denial was due to lack of proof of payment; Taxpayer's protest provided proof of payment. Taxpayer provided documentation and bank statements that show the purchases and payment were made in 2021. Thus, Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

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