
DEPARTMENT OF STATE REVENUE

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**Memorandum of Decision: 04-20221585; 02-20221586;
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**Sales Tax
For The Years 2021 and 2022**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. 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. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. 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

Business provided documentation showing purchases listed as being made by employee were actually paid for by the business and were for resale purposes; however, some transactions were not Indiana sourced transactions. Thus, Business was entitled to a refund of sales tax paid for only Indiana sourced transactions.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-13-1; IC § 6-2.5-5-8; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dept. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-2-1](#).

Taxpayer protests the denial of refund.

STATEMENT OF FACTS

Taxpayer is an Indiana business that sells nutrition-based items such as protein shakes, nutritional supplements, weight-management programs, sports nutrition solutions, and personal care products. Taxpayer purchases items for resale to its customers via Distributor's website. Taxpayer either picked up the purchases at an Illinois warehouse or had the items shipped to an Indiana address. In rare instances, Taxpayer also purchased items that were shipped to an Arizona address. All purchases under protest were listed as being made by Taxpayer's employee.

Taxpayer was charged sales tax by Distributor on all purchases in 2021 and 2022, regardless of whether the orders were picked up in person in Illinois or shipped to Indiana or Arizona. Because Taxpayer purchased the items for resale, Taxpayer filed a refund request for each month in tax year 2021 and January through April in tax year 2022. The Indiana Department of Revenue ("Department") granted some refunds and denied others. In denying certain refunds, the Department determined the refund requests were made under Taxpayer's business account or Taxpayer Identification Number ("TID") instead of by the person who purchased the items (Taxpayer's employee). Additionally, the Department determined the supporting documentation did not reflect Taxpayer paid Indiana sales tax because items were purchased online and picked up at an Illinois warehouse and/or shipped to an address outside of Indiana.

Taxpayer protested the denials. An administrative hearing was held. This Memorandum of Decision results. Additional facts will be provided as necessary.

I. Sales Tax - Refund.

DISCUSSION

The Department determined Taxpayer was not entitled to certain refunds for two reasons. First, the Department denied some refunds because the refund request was made under Taxpayer's business account and TID and not by the individual whose name was on the purchase receipt. Second, the Department denied other refund requests because the purchased items were picked up in Illinois or shipped to an address outside of Indiana.

Taxpayer protested the denials and explained that an employee made the purchases on behalf of Taxpayer, using a business issued credit card. Taxpayer provided copies of receipts for the purchases under protest as well as copies of the business' bank statements.

As a threshold issue, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. "[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).

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

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.

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); [45 IAC 2.2-2-1](#). A retail sale is sourced to Indiana and subject to Indiana sales tax when the transaction is a "retail sale" and the product is received by the purchaser at the business' location in Indiana. IC § 6-2.5-13-1(d)(1). A retail merchant that has a physical presence in Indiana shall collect the tax as an agent for the State. IC § 6-2.5-2-1(b).

Under Indiana law, certain items or transactions may be exempt from tax if certain conditions are met. In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The party seeking the exemption must present sufficient evidence showing the exemption is within the exact letter of the law. *Indiana Dept. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 101 (Ind. Ct. App. 1974). IC § 6-2.5-5-8(b) states that transactions of "tangible personal property...are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business..."

IC § 6-2.5-13-1 states, in part:

- (d) The retail sale, excluding lease or rental, of a product shall be sourced as follows:
- (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
 - (2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser...occurs, including the location indicated by instructions for delivery to the purchaser...known to the seller.

As discussed in the statute, the main focus when determining whether a transaction is sourced to Indiana is the location where the purchaser receives the tangible personal property. If a product is received by the purchaser at the seller's business location, the sale is sourced to that business location. If a product is not received at a seller's business location, the sale is sourced to the location where the product is received by the purchaser, including the location indicated by the delivery instructions (i.e., the shipping or delivery address). For example, if a customer physically shops at a hardware store in Indiana and purchases a tool, the sale is sourced to Indiana because the customer received the tool in the store in Indiana.

Taxpayer explained during the administrative hearing that it purchases supplements, drink mixes, teas, meal replacements, and other items for resale in its store. The purchases related to the refund requests were made by Taxpayer's employee. The employee made the purchases at Taxpayer's direction and used a credit card linked to Taxpayer's bank account. Bank statements provided by Taxpayer confirm the purchases were paid for from Taxpayer's bank account. Even though the receipts show the individual employee's name, the purchases were made by Taxpayer for business purposes. Thus, these purchases should be considered the same as if made directly by Taxpayer under the Taxpayer's name or using Taxpayer's TID.

Taxpayer purchased items from its distributor using two different delivery methods. Taxpayer picked up some orders in person at a Chicago warehouse. Taxpayer opted for shipping other purchases to its Indiana address. Orders picked up at the Chicago warehouse are not Indiana sourced transactions. These purchases were subject to the sales tax rules of Illinois, and any sales tax collected was remitted to the state of Illinois. Contrary to Taxpayer's belief, Illinois does not collect and transfer the sales tax to Indiana; sales tax collected by Illinois remains in Illinois. Because these sales were not Indiana sourced transactions, Taxpayer is not entitled to a refund of sales tax paid on these purchases. Any request for refund of Illinois sales tax needs to be filed with Illinois.

The same reasoning discussed in the preceding paragraph is true for online purchases that were shipped to the Arizona address. Because the items were shipped to an Arizona address, the transactions were not Indiana sourced transactions. Taxpayer is not entitled to a refund of sales tax paid on these purchases. Any request for refund of Arizona sales tax needs to be filed with Arizona.

Finally, Taxpayer's purchases that were shipped to an Indiana address are Indiana sourced transactions. Because Taxpayer purchased products for resale as part of its business, Taxpayer is entitled to a refund of sales tax paid on these purchases. However, a review of the documentation provided during the protest does not entitle Taxpayer to a blanket refund of all Indiana sourced transactions.

Taxpayer protested refunds for January 2021 through April 2022. For this time frame, Taxpayer maintained a bank account with "Bank A." Around July 2022, Bank A was purchased by "Bank B" and began operating under Bank B's name. Taxpayer confirmed the change in bank names and explained that this change necessitated issuance of a new business credit card to Taxpayer as well as Taxpayer's employee by Bank B.

It should be noted that Taxpayer's owner also operated a second, but separate, business entity/location selling the same products as Taxpayer. Taxpayer's employee was also issued credit cards related to the separate business location. To clarify, Taxpayer's employee maintained three business credit cards for the months and purchases under protest: 1) one card from Bank A; 2) one card from Bank A for owner's separate business; and 3) one card from Bank B for Taxpayer. Taxpayer's employee used all three of the cards at different times under protest to make purchases on Taxpayer's behalf for Taxpayer's business discussed in this protest.

Taxpayer provided copies of receipts and bank statements for both Bank A and Bank B as part of the protest. A comparison of the receipts to the bank statements shows purchases made with the original credit card from Bank A on the relevant month's statements. For purchases such as this that are Indiana sourced, Taxpayer is entitled to a refund. However, other purchases were made with the credit card issued by Bank A for owner's separate business. These purchases are identifiable on bank statements for the separate business but do not have a direct link to the bank account in Taxpayer's name.

Taxpayer explained that it sometimes made purchases for both businesses in one transaction while using any of the business credit cards, yet Taxpayer failed to maintain any records showing reimbursement from either business to the other for such transactions. While the Department recognizes that Taxpayer made these decisions to lower its business expenses and save on shipping costs, due to lack of documentation showing that one business reimbursed the other for the expense, the Department cannot refund the sales tax on these purchases. Taxpayer needed to keep detailed records to show which business was purchasing the items and then show which items were allocated to each business. Without this type of documentation, sales tax on purchases made by Taxpayer or by owner's other business which transferred goods to the other entity cannot be refunded. To be clear, Taxpayer is only entitled to a refund of purchases that were made by Taxpayer's employee that can be directly linked to the receipts provided and Taxpayer's bank accounts for either Bank A or Bank B where the bank accounts reflect Taxpayer's business' name.

Finally, a few transactions were made using Taxpayer's owner's husband's personal credit card. Again, these transactions are not linked to Taxpayer's business bank account and cannot be refunded.

To summarize, Taxpayer is not entitled to a refund of sales tax paid on purchases picked up at the Chicago warehouse or shipped to Arizona because these were not Indiana sourced transactions. Taxpayer is entitled to a refund of the seven percent Indiana sales tax on Indiana sourced purchases made by its employee where the purchases can be matched by the receipts to Taxpayer's bank account. Such purchases were made on behalf of the business, paid for using a business credit card, and shipped to an Indiana location.

FINDING

Taxpayer's protest is partially sustained and partially denied.

March 31, 2022

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An [html](#) version of this document.