
DEPARTMENT OF STATE REVENUE

04-20221601; 04-20221602; 04-20221603; 04-20221604; 04-20221605;
04-20221606; 04-20221607; 04-20221608; 04-20221609; 04-20221610;
04-20221611; 04-20221612; 04-20221613; 04-20221614; 04-20221615;
04-20221616; 04-20221617; 04-20221618; 04-20221619; 04-20221620;
04-20221621; 04-20221622; 04-20221623; 04-20221624; 04-20221625;
04-20221626.ODR

**Final Order Denying Refund: 04-20221601; 04-20221602;
04-20221603; 04-20221604; 04-20221605; 04-20221606; 04-20221607;
04-20221608; 04-20221609; 04-20221610; 04-20221611; 04-20221612;
04-20221613; 04-20221614; 04-20221615; 04-20221616; 04-20221617;
04-20221618; 04-20221619; 04-20221620; 04-20221621; 04-20221622;
04-20221623; 04-20221624; 04-20221625; 04-20221626**

Sales Tax**For The Tax Years 2020, 2021, and 2022**

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 not entitled to an additional refund of Indiana sales tax because the correct amount of sales tax for Indiana sourced transactions was previously refunded.

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); [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.

Taxpayer was charged sales tax by Distributor on most 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 from March 2020 through April 2022. The Indiana Department of Revenue ("Department") granted some refunds and denied others. In denying certain refunds, the Department determined the refund requests were not Indiana sourced purchases.

Taxpayer protested the denials. An administrative hearing was held. This Final Order Denying Refund results. Additional facts will be provided as necessary.

I. Sales Tax - Refund.**DISCUSSION**

The Department determined Taxpayer was not entitled to certain refunds because the sales were not Indiana sourced transactions. Specifically, the Department denied refund requests related to purchases that were picked up in Illinois or shipped to an Arizona address.

Taxpayer protested the denials and argued that because the items purchased were for resale, the items were not subject to sales tax. Taxpayer provided copies of receipts for the purchases under protest as well as accompanying 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. Taxpayer made the purchases via Distributor's website and selected one of two different delivery options. Taxpayer could either place an order and pick up the order in person at Distributor's Illinois warehouse or place an order and have it shipped to an address - in Indiana or elsewhere.

The orders picked up at the Illinois 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. 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 on these purchases. Any request for a refund of Illinois sales tax needs to be filed with Illinois. The Department correctly denied the related refund requests.

The same reasoning in the above paragraph is true for the handful of 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. The Department also correctly denied these refund requests.

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 was entitled to a refund of sales tax paid on these purchases. The Department reviewed the receipts provided by Taxpayer with the initial refund request and issued refunds accordingly. In the course of the protest process, the Department has compared the information submitted during the protest to the information submitted with the original refund request. The Department has already refunded the correct amounts of sales tax for any Indiana sourced transactions. Taxpayer is not entitled to any additional refunds related to the periods under protest.

FINDING

Taxpayer's protest is denied.

March 31, 2022

Posted: 05/24/2023 by Legislative Services Agency
An [html](#) version of this document.