

Final Order Denying Refund: 04-20231167
Sales Tax
For the Years 2019, 2020, 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 Final Order Denying Refund.

HOLDING

The Department was unable to agree with Fitness Center Franchisor that it was entitled to a refund of sales tax; Franchisor provided nothing to establish that it inadvertently collected Indiana sales tax on exempt transactions or - if it did make that mistake - that Franchisor was entitled to claim any refund of the tax.

ISSUE

I. Gross Retail Tax - Sales Tax Refund.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-3-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-9-3](#); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); [45 IAC 2.2-4-2](#).

Taxpayer argues that it is entitled to a refund of sales tax collected from Indiana customers on the grounds that Taxpayer inadvertently collected the tax on money received for the provision of exempt services to Indiana customers.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of operating fitness centers including several locations in Indiana. Taxpayer routinely filed Indiana sales tax returns and remitted the tax.

Taxpayer amended its sales tax returns for the purpose of receiving a refund of all the Indiana sales tax collected in Indiana. The Indiana Department of Revenue ("Department") reviewed the returns. As a result of that review, the Department denied the approximately \$300,000 requested refund. In a letter dated June 2022, the Department explained as follows:

The [D]epartment was unable to verify the accuracy of the amended sales returns with the provided information. The refund of sales tax paid is denied in the full amount of [\$300,000].

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. Taxpayer's protest did not specify whether it wanted to explain its protest during a hearing. Nonetheless, the Department scheduled a hearing in order to permit Taxpayer the opportunity to provide that explanation. Taxpayer decided not to participate in the scheduled hearing.

Prior to the hearing date, Taxpayer was asked to provide additional documentation and a written explanation of its protest. In an email to Taxpayer's representatives before the scheduled hearing the Department explained:

I don't see much explaining the reason [Taxpayer] claimed the refund. I have the Department's June 2022 letter denying the refund but not the refund claim or whatever document were submitted along with the claim. If possible, please forward that information.

Taxpayer did not respond to the emailed request. Based on the information available, this Final Order Denying Refund results.

I. Gross Retail Tax - Sales Tax Refund.

DISCUSSION

The issue is whether Taxpayer has established that it is entitled to the originally requested refund of sales tax.

The Department's own records contained what is apparently Taxpayer's rationale.

We filed Sales & Use Tax entries incorrectly. We were not aware that Sales & Use Tax for Indiana is for retail sales only. So, we amended our sales and use tax filings for periods August 2019 - August 2021 to reflect the retail only sales & use tax. The estimated total refund should be [\$300,000].

The refund amount requested (\$300,000) exceeds the sales and use tax reported to the Department during the three-year period. Therefore, Taxpayer apparently collected sales tax on approximately \$4,300,000 in transactions between Taxpayer and its Indiana customers.

In its protest, Taxpayer makes much of its transfer of ownership to a second entity in August of 2019. However, Taxpayer has not explained why the ownership change affects or is relevant to the refund issue at hand.

Where, as here, a taxpayer is challenging the taxability of Indiana sales transactions, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

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 tax on the transaction. [IC 6-2.5-2-1\(b\)](#).

Indiana also imposes a complementary excise tax called "the use tax" 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\(a\)](#).

In effect and practice, Indiana's use tax is functionally equivalent to the sales tax. See *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

[45 IAC 2.2-4-2](#) contains a provision exempting the purchase of services from sales tax. [45 IAC 2.2-4-2\(a\)](#) states that, "Professional services, personal services, and services in respect to property not owned by the person rendering such services are not transactions of a retail merchant constituting selling at retail, and are not subject to gross retail tax." However, "Where, in conjunction with rendering professional services . . . the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail" *Id.*

Taxpayer is correct that Indiana does not impose sales tax on the provision of services. If Taxpayer was collecting tax on the price an Indiana customer paid for the right to use an exercise bike, that transaction is not subject to the tax. If Taxpayer was collecting tax on the price an Indiana customer paid to purchase a sweatshirt, that price is subject to tax.

Taxpayer has not provided the information the Department requires in order to fully vet Taxpayer's argument. There is nothing to explain what Taxpayer was or was not selling or what it was providing to the Indiana customers.

The Department raises a secondary argument potentially fatal to Taxpayer's argument. If Taxpayer incorrectly collected \$300,000 in sales tax, that \$300,000 does not belong to Taxpayer; the \$300,000 belongs to Taxpayer's customers.

[IC 6-2.5-2-1\(b\)](#) states that the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided by law, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. Pursuant to [IC 6-2.5-2-1\(b\)](#), the retail merchant is required to collect the tax as agent for the state. [IC 6-2.5-9-3](#) states that a retail merchant has a duty to remit Indiana gross retail tax to the Department, holds those taxes in trust for the State, and is personally liable for the payment of

those taxes to the State. Simply put, Taxpayer's customers pay sales tax while Taxpayer acts as "agent for the state" in collecting that tax and is required to remit the tax to the Department.

Based on the circumstances described and the scant information provided, the Department finds no reason to conclude that Taxpayer is entitled to claim \$300,000 in sales tax paid by and owed by its customers.

FINDING

Taxpayer's protest is denied.

April 3, 2023

Posted: 06/28/2023 by Legislative Services Agency

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