DEPARTMENT OF STATE REVENUE

04-20231238.ODR
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Final Order Denying Refund: 04-20231238; 04-20231239
Sales Tax
For the Years 2018

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 disagreed with out-of-state Security Company that it was entitled to a refund of sales tax on the grounds that the three-year statute of limitations began to run on the date that Security Company issued its customer a credit for sales tax collected from the customer.

ISSUE

I. Gross Retail Tax - Sales Tax Refund.

Authority: IC 1-1-4-1; IC 6-8.1-9-1; *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); *Leehaug v. State Bd. of Tax Comm'rs*, 583 N.E.2d 211 (Ind. Tax Ct. 1991); Sales Tax Information Bulletin 38, *Application of Sales Tax to Direct Payment Permit Holders* (November 2022).

Taxpayer argues that it is entitled to refunds of sales tax paid to Indiana on behalf of one of its customers.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing electronic security services and devices.

On two occasions, Taxpayer sold equipment to one of its customers. In both cases, Taxpayer collected and remitted Indiana sales tax. Taxpayer first collected and remitted approximately $28,000 in Indiana sales tax. This first transaction took place during November 2018.

Taxpayer later again sold equipment to the same customer. Taxpayer collected and remitted approximately $32,000 in Indiana sales tax. This second transaction took place during December 2018.

This customer subsequently provided an Indiana Department of Revenue ("Department") "Authority for Direct Payment: Sales and Use Tax." The letter states:

> Pursuant to your request for a direct payment permit, the Department of Revenue, under authority of Indiana Code 6-2.5-8-9, authorizes you to make direct payment of such tax imposed on any purchase, use, storage, or other consumption of tangible personal property.
>
> . . . .
>
> Effective July 1, 1969, Indiana Code 6-2.5-8-9 has been revised to make this a permanent permit and no longer requires renewal with the [D]epartment.

Thereafter, Taxpayer provided its permit-holder customer a "credit memo" on the ground that Taxpayer was not required to collect the $28,000 and the $32,000 from the permit-holder customer. The credit memo was dated April 2021.

Taxpayer then filed amended November and December 2018 Indiana sales tax returns to reflect the determination that it should not have collected and remitted the $28,000 and the $32,000. The amended returns were filed March of 2022.

Taxpayer filed these amended returns to recoup the $28,000 and the $32,000 it had erroneously collected from the permit-holder customer. In effect, Taxpayer explained that it made its customer "whole" and that the Department should now make Taxpayer "whole."

The Department reviewed the amended returns and responded in separate letters dated February 2023 and March 2023. Both letters denied the two refund requests explaining as following:

> The Indiana Department of Revenue (DOR) reviewed your claim for a refund and must deny it due to state law. Indiana Code § 6-8.1-9-1 states that in order to receive a refund, a claim must be filed within three years after the due date of the return or date of payment whichever is later. Your request and claim for a refund outside of the time frame and thus must be denied for the following period[s]: [December 31, 2018, and November 30, 2018].

Taxpayer disagreed with the Department's decision denying the $28,000 and the $32,000 refunds and submitted protests to that effect. Taxpayer's protest directed the Department to issue a "Final determination without a hearing." This Final Order Denying Refund is written following a review of the documentation Taxpayer provided and the documentation otherwise available to the Department.

I. Gross Retail Tax - Sales Tax Refund.

DISCUSSION

The issue is whether Taxpayer has established that it is entitled to a refund of the $28,000 and the $32,000 it collected but then credited to its permit-holder customer.

At the outset, the Department notes that a direct pay permit "enables taxpayers to remit use tax directly to the state rather than paying sales tax to their suppliers." Sales Tax Information Bulletin 38, *Application of Sales Tax to Direct Payment Permit Holders* (November 2022).

Taxpayer believes that the amended sales tax returns were timely filed. Taxpayer explains as follows:

> The amended returns were not filed at the time of the credit memo since [Taxpayer] wanted to make sure that this was a valid credit to report to the state.
>
> We believe that the stat[ute] of limitations should be from the credit memo date and not the date of the returns. We are requesting that credits on the amended returns be granted.

In effect, Taxpayer maintains that statute of limitations should run from the date the credit memo was issued in April 2021. Since the amended returns were submitted March of 2022, Taxpayer concludes that its two refund claims were timely filed because the amended returns were filed approximately one year after the date the credit memo was issued.

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). Therefore, the Department's earlier decisions denying the refunds and evaluating Taxpayer's requests are entitled to deference.

In this case, the Department concluded that the refund requests were untimely citing to IC 6-8.1-9-1(a).

> 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. Except as provided in subsections (j), (k), (l), (m), and (n), in order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:
> (1) The due date of the return.
> (2) The date of payment.

Taxpayer believes that the statute of limitations is governed by the dealings between a vendor (Taxpayer) and a

customer; essentially, the running of statute is triggered by a decision made by the vendor to unwind an earlier sales transaction. The Department must respectfully disagree. IC 6-8.1-9-1(a) imposes a requirement on both Indiana taxpayers and the Department; it instructs what taxpayers must do if they claim a refund and it instructs the Department what it may and may not do when a refund is submitted.

Taxpayer suggests that the Department roam outside the four corners of the law in interpretating the plain words of IC 6-8.1-9-1(a). Indiana law does not allow either the Department or Taxpayer such discretion. Instead, the law instructs that statutory construction starts with the "plain and ordinary meaning of the language used." *E.g.*, *Leehaug v. State Bd. of Tax Comm'rs*, 583 N.E.2d 211, 212 (Ind. Tax Ct. 1991).

In addition, IC 1-1-4-1 specifically requires:

> The construction of all statutes of this state shall be by the following rules, unless the construction is plainly repugnant to the intent of the legislature or of the context of the statute:
> (1) Words and phrases shall be taken in their *plain, or ordinary and usual, sense*. Technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import. (*Emphasis added*).

Taxpayer's suggestion that the Department amend, modify, or reinterpret IC 6-8.1-9-1(a) is unavailing and impractical. Under Taxpayer's suggestion, the statute of limitations would be governed by the dealings between a seller and buyer and could - depending on when a credit memo was issued - extend the three-year limitations period indefinitely.

A "plain, or ordinary and usual" reading of IC 6-8.1-9-1(a) precludes Taxpayer's suggested interpretation, and the Department finds nothing remotely "repugnant" in the Department's original application of the statute and its decision denying the two refunds.

In this case, both Taxpayer and the Department are bound by IC 6-8.1-9-1(a), and the Department must respectfully deny both of Taxpayer's protests.

FINDING

Taxpayer's protests are respectfully denied.

April 3, 2023

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An html version of this document.