

**Final Order Denying Refund: 04-20221259**  
**Indiana Gross Retail Tax**  
**For the Year 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**

Management Company was not entitled to an additional refund of sales tax paid on the purchase of prewritten computer software because the information provided did not establish that Company paid for exempt services; Company was not entitled to a refund of sales tax paid on the purchase of maintenance agreements because the Department rejected Company's argument that the maintenance agreements' sales tax liability could be apportioned depending on the number of the underlying software's in-state and out-of-state users.

**ISSUES**

**I. Gross Retail and Use Tax - Remotely Accessed Prewritten Computer Software.**

**Authority:** [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#); [IC 6-2.5-4-16.7](#); [IC 6-2.5-5](#) et seq.; [IC 6-2.5-13-1](#); *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); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-3-14](#); [45 IAC 2.2-5-3](#); [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-9](#); [45 IAC 2.2-5-10](#); Sales Tax Information Bulletin 8 (July 1, 2018); Sales Tax Information Bulletin 8 (December 2016); Sales Tax Information Bulletin 8 (November 2011).

Taxpayer argues that it is entitled to a refund of sales tax paid on pre-July 1, 2018, purchases of pre-written software on the ground that Taxpayer was paying for the right to use or simply access that software.

**II. Gross Retail and Use Tax - Software Maintenance Agreements.**

**Authority:** [IC 6-2.5-1-14.5](#); [IC 6-2.5-4-17](#); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); Sales Tax Information Bulletin 8 (December 2019).

Based on the location of in-state and out-of-state software users, Taxpayer argues that it is entitled to an apportionable refund of the sales tax it paid on the purchase of software maintenance agreements.

**III. Gross Retail and Use Tax - Maintenance Agreements and Software Installed on Hardware Outside Indiana.**

**Authority:** Indiana Sales Tax Bulletin 8 (July 2018); [IC 6-2.5-13-1](#).

Taxpayer maintains that it is entitled to a refund of sales tax paid on the purchase of software licenses some of which were licenses for software installed on locations outside Indiana.

**STATEMENT OF FACTS**

Taxpayer is an Indiana company which provides administrative services to its parent company and to the parent company's various affiliates. Taxpayer provides these parties accounting, information technology, procurement, and financial services.

Taxpayer submitted a form GA-110L (Claim for Refund) seeking a refund of sales or use tax it paid on the purchase of computer software. Taxpayer explained that it had erroneously paid sales tax to the software vendors. As further explained in the Department's written "Investigation Findings" ("IF"), "[T]he transactions in question represent software used outside Indiana." In addition, the IF explains that Taxpayer seeks "a refund of sales tax paid for [software] maintenance contracts associated with these software licenses used outside of

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's refund request. Following that review, the Department issued the "Investigation Findings" ("IF"), stating, "DOR has reviewed the claim and denies the claim in part in the amount of [approximately \$434,000] based upon the reason(s) below. Those "reasons" were set out in the five-page IF. In part, the Department explained that a number of the software invoices did not include sales tax, Taxpayer failed to provide vendor contracts implementing the software purchases, Taxpayer failed to establish that it paid sales tax on a number of software purchases, some of the invoices reflected the payment of sales tax calculated at a rate other than Indiana's seven-percent rate, Taxpayer did not provide proof it paid tax on a number of the invoices, and Taxpayer failed to provide vendor invoices for all transactions.

The audit IF explained why the Department disagreed with Taxpayer that it was entitled to a refund of sales tax paid on the purchase of maintenance agreements. The IF explains that Taxpayer was seeking "a refund of sales tax paid for [software] maintenance contracts associated with [] software licenses used outside of Indiana . . . ." The IF explained that the agreements' sales tax liability could not be apportioned among the states in which the underlying software was used.

Taxpayer disagreed with the Department's decision denying a portion of the original refund and submitted a protest to that effect. In its protest, Taxpayer challenged the Department's denial of approximately \$310,000 in sales tax. The Department here notes that Taxpayer did not challenge the denial of the originally disputed \$430,000 but now challenges a portion of that amount.

An administrative hearing was conducted by telephone during which Taxpayer's representatives explained the basis for its protest. This Memorandum of Decision results.

## **I. Gross Retail and Use Tax - Remotely Accessed Prewritten Computer Software.**

### **DISCUSSION**

The issue is whether Taxpayer has established that it is entitled to a refund of sales/use tax paid on the purchase and/or use of pre-written computer software.

#### **A. The Department's Investigation Findings and Conclusions.**

The Department's IF acknowledges that Taxpayer was seeking a refund of sales/use tax on purchases of software, software licenses, and software maintenance agreements.

According to the IF, the Department assumed that the computer software was delivered to or located on Taxpayer's Indiana "server farm." As explained in the Department's IF, "[T]axpayer still has one server farm . . . and has not provided any documentation to demonstrate that the location of the server(s) has changed since 2016."

The Department's IF further explained that the "software is on the Indianapolis server before the software is assigned (or allocated) to particular users with the [Taxpayer] group of related entities." Therefore, "Since the software has been initially stored on an Indiana server, the software and the software maintenance contracts would be subject to Indiana tax." As a result, the Department concluded that "the Indiana retail merchants (the software and maintenance contract vendors) correctly charged [Taxpayer] the Indiana sales tax upon these transactions."

It is important to note here that the Department addressed separately transactions which occurred before July 2018 and transactions that took place during the second half of 2018. In addressing Taxpayer's protest, the Department points out that "the requested refund for invoices paid **within the first six (6) months of 2018** is being denied." Therefore, "[T]he requested refund for invoices paid within the last six (6) months of 2018 is being allowed." However, "[T]he entire [amount] requested for the last six (6) months of 2018 is not being permitted due to additional concerns with the filed refund . . . ." Simply put, the Department denied refunds for transaction that occurred in the first six months of 2018 but granted refunds for transactions that took place during the last six months of 2018.

The IF sets out reasons why certain post-July 1, 2018, transactions were being denied.

- No sales tax was paid on a portion of the post-July 1, 2018, transactions;

- Certain transactions were not during calendar year 2018;
- Other transaction invoices listed a tax rate other than seven percent;
- Taxpayer was unable to confirm that it paid sales tax on a number of transactions.

Taxpayer originally based its claim on an allocation of its software users; some of the users were located in Indiana, and some were located outside the state. Taxpayer calculated that 85 percent of the software was accessed by out-of-state users. As a result, Taxpayer concluded that it was entitled to a refund of 85 percent of the sales tax or use tax it paid Indiana.

However, the IF explained that the Department was unable to verify Taxpayer's 85 percent calculation. The IF explained that "the 85[percent] exempt percentage that the [T]axpayer's representative has used to determine Indiana versus non-Indiana software usage is flawed for two reasons."

- The percentage of usage should be determined for each software purchase - not an annualized total.
- Software/hardware maintenance contracts and software license agreements were requested to determine the Indiana usage on a contract-by-contract basis. Two contracts were provided, but the remaining were not provided. In addition, two contracts identified the number of software users; however, the in-instate and out-of-state software users were not identified.

The IF also noted a number of transactions were removed from consideration because sales tax could not be refunded since "these Indiana sales taxes have not been paid." Finally, the IF denied refunds because the Department could not confirm that - although represented on the vendor invoice.

### **B. Taxpayer's Response to the Department's Analysis.**

Taxpayer responded to some of the objections raised in the Department's IF. Taxpayer explained that it maintains 17 server locations and agreed that a number of invoices were correctly withdrawn from consideration. Taxpayer takes a different approach in this protest than it did when it first submitted the refund. Instead of claiming an allocated refund of tax based on the in-state/out-of-state location of the software users, Taxpayer explains that it is entitled to a refund because the tax was paid on "hosted services for which [Taxpayer] did not receive ownership of the underlying services . . . ." In other words, Taxpayer explains that it did not pay tax on "tangible personal property" but erroneously paid the tax on the purchase of exempt services made available by means of computer software it did not purchase.

When any taxpayer challenges taxability in a specific instance, that 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).

### **C. Indiana's Gross Retail Tax.**

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\(a\)](#). "When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location." [IC 6-2.5-13-1\(d\)\(1\)](#). "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 . . ." [IC 6-2.5-13-1\(d\)\(2\)](#).

### **D. Computer Software and Indiana's Sales/Use Tax.**

[IC 6-2.5-1-27](#) incorporates "prewritten computer software" in the definition of tangible personal property subject to sales/use tax:

"Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and *prewritten computer software*. (*Emphasis added*).

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\(b\)](#). In part, the statute provides.

The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction.

The Department here takes note of [IC 6-2.5-4-16.7](#) (Effective July 1, 2018) which provides:

- (a) Except as provided in subsection (b), a person is a retail merchant making a retail transaction when the person sells, rents, leases, or licenses for consideration the right to use prewritten computer software delivered electronically.
- (b) A transaction in which an end user purchases, rents, leases, or licenses the right to remotely access prewritten computer software over the Internet, over private or public networks, or through wireless media:
  - (1) is not considered to be a transaction in which prewritten computer software is delivered electronically; and
  - (2) *does not constitute a retail transaction. (Emphasis added).*

[IC 6-2.5-4-16.7](#) provides an exemption - or exclusion - from sales tax because the legislature deemed that post-July 1, 2018, purchases of pre-written software were not "retail transactions."

[IC 6-2.5-4-16.7](#) is not directly relevant to transactions here at issue because the transactions here at issue each took place before July 1, 2018. [IC 6-2.5-4-16.7](#) has no "look back" effect.

Instead, the pre-July 1, 2018, transactions are governed under [IC 6-2.5-1-27](#) which simply incorporates "prewritten computer software" in the definition of tangible personal property subject to sales/use tax.

Taxpayer apparently believes that the pre-July 1, 2018, transactions at issue are not subject to sales/use tax because Taxpayer never gained a possessory (ownership) interest in any of software. For purchases which took place between December 2016 and before July 1, 2018, the issue Taxpayer raises is addressed in Sales Tax Information Bulletin 8 (December 2016), 20170125 Ind. Reg. 045170026NRA.

The 2016 Bulletin serves as a useful guide in determining whether software transactions were or were not subject to Indiana sales/use tax. Sales Tax Information Bulletin 8 (December 2016) explains, in relevant part, as follows:

The taxability of software that can be electronically accessed via the internet, either by remote access from a hosted computer or server or through a pool of shared resources from multiple computers and servers ("cloud computing"), without having to download the software to the user's computer, is not specifically addressed in the Indiana Code. Whether a transaction involving the use of "cloud-based" software is subject to Indiana sales or use tax depends on the facts and circumstances of each transaction, particularly with regards to the amount of *control or possession the purchaser is granted* in the software, the object of the transaction, and the ownership rights, if any, the purchaser has in the software.

Depending on the factors of the transaction and arrangement, SaaS [Software as a Service] *may or may not be subject to tax*. Charges for accessing prewritten computer software maintained on the vendor's or a third party's computer or servers are not subject to tax when accessed electronically via the Internet if the customer is not transferred the software, does not have an ownership interest in the software, and does not control or possess the software or the server.

....

Prewritten computer software purchased by an Indiana taxpayer, which is accessed by the Indiana taxpayer from the vendor's or a third party's computer servers electronically via the internet from the taxpayer's computer *could constitute a transfer of the software* because the taxpayers gain constructive possession and the right to use, control, or direct the use of the software. As such, this transaction would be subject to sales tax . . . . (*Emphasis added*).

Simply put, purchases of software before July 1, 2018, were treated as the sale of tangible personal property. However, remotely accessed software purchased before July 1, 2018, may or may not be subject to Indiana's sales/use tax depending on the degree of control or possession the buyer exerts over the software; i.e., is the purchaser buying tangible personal property - in the form of software - or is the purchaser paying for the right to simply use software that belongs to someone else? To make that determination, Sales Tax Information Bulletin 8 (December 2016), provides as follows:

In order to determine whether a purchaser obtains a possessory or ownership interest in pre-written software, the following factors that indicate a possessory or ownership interest should be considered:

- Whether the Indiana customer obtains or is granted the right to access or download copies of the software to the customer's own computers, servers, or network;
- Whether the Indiana customer gains or is granted the right to modify or customize the pre-written software;
- Whether the Indiana customer gains or is granted the right to make copies of the pre-written software for the customer's own use;
- Whether the Indiana customer is required to pay additional amounts for enhancements, modifications, or updates to the software;
- Whether the provider has a policy of providing a duplicate copy of the software at minimal or no charge if the customer loses or damages the software;
- Whether the Indiana customer gains or obtains the right to use, deploy, or access the software for an unlimited or indeterminate period of time;
- Whether the software must be returned or destroyed at the end of a specifically limited license period;
- The relative price paid for accessing or using the software compared to the price charged for obtaining a possessory or ownership interest in that same, similar, or comparable software.

#### **E. Sales and Use Tax Exemptions in General.**

As a rule, all purchases of tangible personal property - including computer software - are subject to sales or use tax unless specifically exempted by statutes or regulations. [45 IAC 2.2-5-3\(b\)](#); [45 IAC 2.2-5-6\(a\)](#); [45 IAC 2.2-5-8\(a\)](#); [45 IAC 2.2-5-9\(a\)](#); [45 IAC 2.2-5-10\(a\)](#). Various sales tax exemptions are outlined in [IC 6-2.5-5](#) et seq. which are also applicable to use tax. [45 IAC 2.2-3-14\(2\)](#).

Any statute which provides any tax exemption, however, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

#### **F. Taxpayer's Software Purchases.**

Taxpayer purchased - or paid for the right to utilize - prewritten computer software from various well-known vendors such as Citrix and IBM. Taxpayer maintains that it did not purchase tangible "software" from these vendors but that it purchased computer software-based exempt "services." In other words, it paid for the right to remotely access software owned by someone else. Under those circumstances, Taxpayer concludes that it is entitled to a refund of sales or use tax paid on these service-based transactions.

Taxpayer points out that "prewritten computer software maintained on computer servers outside of Indiana is subject to tax when accessed electronically via the Internet." As authority for its position, Taxpayer necessarily relies on the Department's Sales Tax Information Bulletin 8 (December 2016).

Charges for accessing software maintained on a vendor or third party's server is not subject to tax when accessed electronically through the Internet if the customer is not transferred the software, does not have an ownership interest in the software, and *does not control or possess the software* or the server. Sales Tax Information Bulletin 8 (December 2016) (*Emphasis added*).

According to Taxpayer, this Bulletin supports its position that "[p]rewritten software maintained on computers outside of Indiana that are not accessed electronically in Indiana . . . are not subject to Indiana tax." In the case of the transactions which took place prior to July 1, 2018, and regardless of ownership interest, sourcing rules, or delivery location the Department's guidance on this issue is found at Sales Tax Information Bulletin 8 (November 2011), 20111228 Ind. Reg. 045110765NRA, in effect at the time of the transactions and is dispositive of software issues raised here by Taxpayer.

Prewritten computer software maintained on computer servers outside of Indiana also is subject to tax when accessed electronically via the Internet (i.e., "cloud computing"). The accessing of prewritten computer software by Indiana residents constitutes a transfer of the software because the customers gain constructive possession and the right to use, control, or direct the use of the software. Sales Tax Information Bulletin 8

The Sales Tax Information Bulletin 8 (July 1, 2018) is clear on the application of the aforementioned 2011 and 2016 Bulletins:

[T]ransactions involving remotely accessed software occurring prior to July 1, 2018, will need to be analyzed using guidance published in the prior version of this bulletin.

In support of its argument, Taxpayer provided copies of vendor invoices along with description of the computer software and the services or functionality provided by the software.

What follows are the software transactions which - according to Taxpayer - represent software or software services purchased during the first six months of 2018 and for which Taxpayer explains that it did not "gain[] constructive possession and the right to use[] control[] or direct the use of the software." Sales Tax Information Bulletin 8 (December 2016). The descriptions following are provided word-for-word by Taxpayer.

**1. Arrow Enterprise Computing Solutions.**

The ArrowSphere platform centralizes the billing and provisioning of cloud services that deliver storage and servers on demand, security-as-a-service, software-as-a-service and unified communications. Per the Arrow Enterprise Computing Solution service agreement, the Arrowsphere platform allows the users access to cloud infrastructure subscriptions.

**2. Salesforce.**

Salesforce is cloud-based customer relationship management platform. The users access the software remotely via an app. Per the Salesforce service agreement, users are able to access the software by logging into the relevant service.

**3. IBM Cognos Analytics Standard on Cloud Software.**

IBM Cognos Analytics is a cloud-based web reporting and analytical tool. The licenses are bought in bulk and can be transferred between user to user. Per IBM Cognos Analytics service agreement, the services provided are cloud-based services that are hosted in a "SoftLayer data center" where the client has access to current version of the software available.

**4. Nasuni Design Subscription.**

Nasuni platform is a cloud-based file storage, file backup, and disaster recovery, while offering advanced capabilities for multi-site file synchronization. Per the Nasuni subscription agreement, the user accesses the software through a web-based interface.

**5. TIMS Software Subscription.**

TIMS is cloud-hosted software that provides a comprehensive and integrated business management system for medical providers.

**6. Zycus' iSource.**

Zycus' iSource is a cloud-based e-sourcing automation software that offers shorter sourcing cycle times and allows its customers to conduct simple to highly complex sourcing events. Per Zycus' iSource service agreement, users access the software by logging into the vendor's website.

**7. Smartsheet.**

Smartsheet is software as a service offering for collaboration and work management. It is used to assign tasks, track project progress, manage calendars, share documents, and manage other work, using a tabular user interface. Per Smartsheet service agreement, users access the service online by logging into the vendor's website.

**8. Citrix Virtual Apps Subscription.**

Citrix Virtual Apps is an application virtualization software produced by Citrix Systems that allows Windows applications to be accessed via individual devices from a shared server or cloud system. Per the Citrix license agreement, [Citrix provided services].

Taxpayer's descriptions contain multiple references to "cloud based" software. However, the tangibility of software purchased before July 2018 is not dispositive of the refund issue. Instead, taxability is governed by the distinction between purchasing tangible personal property and purchasing the right to use or access software in which the



purchaser has no possessory or ownership interest. The information provided is simply not sufficient to make that crucial distinction. In addition, the Department finds no support for the proposition that sales (*not* use) tax liability is apportionable by the number of people who make use of the software within Indiana and outside Indiana. Instead, Indiana's sales tax is triggered by the nature and substance of the underlying transaction; did a vendor sell tangible personal property to an Indiana customer? Without additional information addressing the ownership issue, it is not possible to answer that question or sustain Taxpayer.

### FINDING

As explained in Part I above, Taxpayer's protest is respectfully denied.

## II. Gross Retail and Use Tax - Software Maintenance Agreements.

### DISCUSSION

Taxpayer seeks a refund of tax paid on the purchase of software maintenance agreements. Taxpayer explained that it was entitled to sales tax refunds because it "paid Indiana sales tax on software maintenance and support services for which no patches, updates, upgrades, or repairs of the software were provided to [Taxpayer]." Taxpayer relies on the Department's Sales Tax Information Bulletin 8 (December 2019), 20200401 Ind. Reg. 045200164NRA which states:

A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software. These contracts are therefore subject to sales tax. Additionally, if the software maintenance is contracted for and included as part of a transaction for prewritten computer software under a single, non-itemized price, the entire transaction is subject to sales tax unless: (1) the software maintenance contract and the other products included under a single price meets one of the statutorily enumerated exceptions to a bundled transaction; (2) the updates and upgrades are eligible for an exemption (e.g., they are directly used in direct manufacturing of tangible personal property for sale) as is the prewritten computer software transferred in the transaction; or (3) the software maintenance only applies to prewritten computer software included in the contract which is strictly remotely accessed software. Sales Tax Information Bulletin 8 (December 8, 2019), 20200401 Ind. Reg. 045200164NRA.

The Department here points out that the 2019 Bulletin is not specifically applicable to transactions which occurred during 2018, although it provides a useful guide. In general, the exemption for software maintenance agreements follows the exemption for the underlying software.

As explained in the Bulletin - software maintenance agreements - which provide for updates and fixes - are subject to sales tax if the agreement calls for the vendor to provide services for taxable computer software. If the agreement calls for the vendor to maintain and update software which is itself exempt, then the maintenance agreement piggybacks on that exemption.

In its protest submission, Taxpayer summarizes as follows. "Claimant respectfully requests a refund of Indiana sales tax paid to vendors for software maintenance performed by vendors on Claimant's software."

[IC 6-2.5-1-14.5](#) defines "Computer software maintenance contract" as "a contract that obligates a person to provide a customer with future updates or upgrades of computer software."

Indiana law, [IC 6-2.5-4-17](#), provides:

A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software. (*Effective July 1, 2010*).

Therefore, the purchase of a maintenance agreement that provides updates, fixes, patches, and the like are subject to Indiana's sales tax.

In addressing Taxpayer's refund claims and the rationale buttressing the claims, the Department is again mindful of the rule that "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 101 (Ind. Ct. App. 1974). The Department is unable to agree that a taxpayer's bare assertion as to the taxability of its maintenance agreements is sufficient when there is no

documentation and no clear legal argument to buttress that assertion.

In this instance, Taxpayer has not provided copies of the sales invoices, written agreements, or the identity of the maintenance vendors.

The Department is unable to agree that Taxpayer here has established that it is entitled to a refund of Indiana sales tax paid on purchases of maintenance agreements.

Taxpayer has not established that these unidentified maintenance agreements fall within the exemption provided in instances in which the agreement does not call for updates, patches, or "fixes."

### **FINDING**

Taxpayer's protest is respectfully denied.

### **III. Gross Retail and Use Tax - Maintenance Agreements and Software Installed on Hardware Outside Indiana.**

### **DISCUSSION**

The issue is whether Taxpayer has established it is entitled to claim a refund of sales tax paid on the purchase of computer software "installed . . . on hardware located outside Indiana."

Taxpayer explains that Indiana law "support[s] an allocation of the purchases of multiple software licenses to software installed on out-of-state software."

Taxpayer again relies on Indiana Sales Tax Information Bulletin 8 (July 2018) cited in Part II above but also cites to [IC 6-2.5-13-1](#)(d)(2) which states:

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 (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

Taxpayer explains that it purchased multiple software licenses, that some of the licenses were delivered to an out-of-state location, that licenses which were not delivered to Taxpayer's Indiana business location are not subject to Indiana's tax, and that the purchase of these specific licenses should be "sourced" to a state other than Indiana.

The Department agrees that Taxpayer's analysis is not entirely unfounded but the sought after conclusion leaves too much to the Department's imagination and speculation. Taxpayer has not identified the specific purchases, has not identified the software vendors, has not identified the licenses which were delivered to another state, and has not explained how Taxpayer determined that it was entitled to a refund of almost \$65,000 paid on the purchase of approximately \$930,000 in software licenses.

The Department notes that Taxpayer has not suggested or established that it reported or paid sales or use tax to one of the other states to which the \$930,000 in software was delivered.

### **FINDING**

Taxpayer's protest is respectfully denied.

### **SUMMARY**

The Department does not agree that Taxpayer has established that it is entitled to an additional refund of sales tax.

May 16, 2023

*Posted: 07/26/2023 by Legislative Services Agency*



