

Final Order Denying Refund: 04-20231278
Sales Tax
For the Years 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

Despite having refunded sales tax to its customer, Indiana Contractor was not entitled to a refund of sales tax because Contractor did not establish that sales of materials to Indiana Contractor's customer were exempt.

ISSUE

I. Gross Retail Tax - Sales Tax Refund.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-9-3](#); [IC 6-2.5-5-25](#); *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).

Taxpayer argues that it is entitled to a refund of sales tax because it refunded the tax to its customer.

STATEMENT OF FACTS

Taxpayer is an Indiana roofing contractor. During March and May 2022, Taxpayer sold roofing products to another roofing contractor ("Second Contractor"). Taxpayer charged the Second Contractor Indiana sales tax. The total amount of sales tax was approximately \$1,800.

The Second Contractor used these materials to complete a project for a non-profit religious organization ("Religious Organization"). Thereafter, the Second Contractor provided Taxpayer the Religious Organization's exemption certificate. Taxpayer then proceeded to issue Second Contractor a credit memo for the \$1,800.

Following the issuance of the credit memo, Taxpayer submitted the Indiana Department of Revenue ("Department") a "Claim for Refund" (GA-110L) seeking the return of \$1,800.

In a letter dated October 2022, the Department denied the refund explaining in part as follows:

The claim for refund did not include information necessary for the Department to verify the claim. We contacted you on September 9, 2022, advising that additional supporting documentation must be received by this office within fourteen (14) days. We did not receive the additional documentation necessary to process the claim.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. The protest asked for a "[f]inal determination without a hearing." 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 a refund of sales tax on the grounds that the sale of roofing materials to the Second Contractor was exempt from sales tax.

Where, as here, any 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\(b\)](#).

[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.

A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. [IC 6-2.5-3-2](#).

In this case, Taxpayer was the retailer required to collect and then hold in trust sales tax. The Second Contractor was the customer because it bought the materials and paid Taxpayer the tax.

[IC 6-2.5-3-2\(c\)](#) explains when a contractor is entitled to pay sales or use tax on materials purchased for a customer when the customer is entitled to claim an exemption.

The use tax is imposed on a contractor's conversion of construction material into real property if that construction material was purchased by the contractor. However, the use tax does not apply to conversions of construction material described in this subsection, if:

- (1) the state gross retail or use tax has been previously imposed on the contractor's acquisition or use of that construction material;
- (2) the person for whom the construction material is being converted could have purchased the material exempt from the state gross retail and use taxes, as evidenced by a properly issued exemption certificate, if that person had directly purchased the construction material from a retail merchant in a retail transaction; or
- (3) the conversion of the construction material into real property is governed by a time and material contract as described in [IC 6-2.5-4-9\(b\)](#).

In other words, a qualifying entity - such as the Religious Organization - can acquire roofing materials without paying sales or use tax when the materials are acquired to advance the purpose of that organization. Likewise, a contractor can purchase building materials without paying sales tax if the transaction falls within the requirements set out at [IC 6-2.5-3-2\(c\)](#).

[IC 6-2.5-5-25\(a\)](#) provides the exemption for purchases made by a nonprofit. It states the following in relevant part the following:

Transactions involving tangible personal property, accommodations, or service are exempt from the state gross retail tax, if the person acquiring the property, accommodations, or service:

- (1) is any of the following types of organizations:
 - (A) A fraternity, a sorority, or a student cooperative housing organization that is connected with and under the supervision of a postsecondary educational institution if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.
 - (B) Any:
 - (i) institution;
 - (ii) trust;
 - (iii) group;
 - (iv) united fund;
 - (v) affiliated agency of a united fund;
 - (vi) nonprofit corporation;
 - (vii) cemetery association; or
 - (viii) organization; that is organized and operated exclusively for **religious**, charitable, scientific, literary, educational, or civic purposes if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate. (**Emphasis added**).

In other words, a qualifying entity - such as the Religious Organization - can acquire roofing materials without paying sales or use tax when the materials are acquired to advance the purpose of that organization. The Department agrees that Religious Organization is entitled to claim an exemption on its purchase of tangible personal property used for the organization's purposes.

However, Taxpayer was not selling to the Religious Organization; Taxpayer was selling to the Second Contractor. That Second Contractor may very well be entitled to an exemption, or it may not be entitled to the exemption. For instance, if the materials were sold to the Religious Organization, Second Contractor may well be entitled to an exemption because Second Contractor first bought the materials to resell those items. Given the circumstances, the Department suggests here that Second Contractor likely is not entitled because the materials were used by the Second Contractor to complete a project; in effect, there is a difference between "selling" and "consuming." Second Contractor did not sell; it likely consumed.

Was the Second Contractor entitled to an exemption when it bought the roofing materials? Perhaps, but that requires the Second Contractor to establish that it is entitled to its own exemption, and that requirement is not met by pointing to and relying on another entity's tax status. The Department was correct when it explained that the Department needed additional pertinent information necessary to support Taxpayer's claim. Unfortunately, Taxpayer was unable to provide that information.

Sales tax is imposed on the transaction - not the roofing materials - and this transaction took place between Taxpayer and Second Contractor. Taxpayer may not rely on the Religious Organization's exemption when that organization was not party to the transaction at issue.

FINDING

Taxpayer's protest is respectfully denied.

June 2, 2023

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