

Final Order Denying Refund: 04-20210100
Gross Retail (Sales) Tax
For the Tax Years 2017 - 2020

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 determination.

HOLDING

Indiana Business was not entitled to a refund of sales tax because it failed to demonstrate that it purchased the electricity from, and paid sales tax, to the public utility.

ISSUE

I. Sales and Use Tax - Refund.

Authority: [IC 6-2.5-1-2](#); [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-5](#); [IC 6-8.1-9-1](#); *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *North Central Indus., Inc. v. Indiana Dep't of State Revenue*, 790 N.E.2d 198 (Ind. Tax Ct. 2003); *Medco Health Sols., Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263 (Ind. Tax Ct. 2014); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 2.2-4-13](#); [45 IAC 15-9-2](#); Black's Law Dictionary (11th ed. 2019).

Taxpayer protests the refund denial of sales tax.

STATEMENT OF FACTS

Taxpayer is in the printing business. To conduct its business, Taxpayer leases a portion of a building owned and managed by an unrelated third-party company ("Landlord").

Landlord purchases electricity from a public utility to facilitate its business operation of commercial real estate lease. Landlord pays the monthly charges - including sales tax - to a public utility. Taxpayer pays Landlord monthly rents, which included the agreed operating expenses of the facility, such as "water, electricity and other utility expenses" pursuant to their lease agreement.

In December 2020, Taxpayer filed a claim for refund of approximately \$105,000 sales tax on electricity - paid by Landlord - during 2017, 2018, 2019, and 2020. Upon review, the Indiana Department of Revenue ("Department") denied the refund claim in full.

Taxpayer protested the refund denial. A hearing was held. Taxpayer requested and was given additional time to provide supporting documents to substantiate its refund claim. This Final Order Denial Refund results. Additional facts will be provided as necessary.

I. Sales and Use Tax - Refund.

DISCUSSION

The Department denied Taxpayer's refund on the grounds that Taxpayer, as a tenant, did not purchase the electricity, did not pay sales tax on the electricity, and was not entitled to the refund of sales tax paid by Landlord. The Department explained the following:

[Taxpayer] is a tenant in a [] multi-tenant facility All the electric bills are in the name of and paid for by [Landlord]. . . .

Taxpayer disagreed, claiming that it was entitled to a refund of \$105,000 sales tax paid by Landlord. The issue is

whether Taxpayer, as a tenant, was entitled to the refund of sales tax paid by Landlord.

As a general rule, "[i]f 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 within three (3) years after the later of (1) the due date of the return, or (2) the date of payment. [IC 6-8.1-9-1\(a\)](#). To properly claim a refund for an overpayment of tax, a taxpayer is required to show that it overpaid the tax and substantiate its refund request by clearly stating "the amount of the refund," provide "a detailed explanation of the basis of the claim such that the department may determine its correctness," list "the tax period for which the overpayment is claimed," and designate "the year and date of the overpayment." [45 IAC 15-9-2](#); see also [IC 6-8.1-9-1\(a\)](#); *Medco Health Sols., Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263, 266 (Ind. Tax Ct. 2014).

"When a taxpayer claims entitlement to a tax exemption, the taxpayer bears the burden of showing that the terms of the exemption are met." *North Central Indus., Inc. v. Indiana Dep't of State Revenue*, 790 N.E.2d 198, 200 (Ind. Tax Ct. 2003). Specifically, a statute which provides a tax exemption 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). When a taxpayer challenges the taxability, 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). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014). 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." *Id.* at 583.

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 "[r]etail transaction" is "a transaction of a retail merchant that constitutes selling at retail as described in IC [§] 6-2.5-4-1 [or] . . . in any other section of [IC 6-2.5-4](#)." [IC 6-2.5-1-2\(a\)](#). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." [IC 6-2.5-4-1\(b\)](#). "Tangible personal property" includes "electricity." [IC 6-2.5-1-27](#). The retail merchant shall collect the tax as agent for the state." [IC 6-2.5-2-1\(b\)](#). The purchaser "who acquires property in a retail transaction is liable for the tax on the transaction and . . . shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.*

In addition, [IC 6-2.5-4-5](#) (applicable during 2017 through 2020), in relevant part, provides:

- (a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.
- (b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or domestic consumption. . . .

[45 IAC 2.2-4-13](#) further explains:

- (a) In general, the furnishing of electricity, gas, water, steam, or steam heating services by public utilities to consumers is subject to tax.
...
- (c) Sales of public utility services or commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#), based on a single meter charge, flat rate charge, or other charge, are excepted if such services are separately metered or billed and will be used predominantly for the excepted purposes.
- (d) Sales of public utility services and commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, or horticulture, based on a single meter charge, flat rate charge, or other charge, which will be used for both excepted and nonexcepted purposes are taxable unless such services and commodities are used predominantly for excepted purposes.
- (e) Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or

commodities are used predominantly for excepted purposes. Predominant use shall mean that more than fifty percent (50[percent]) of the utility services and commodities are consumed for excepted uses.

Therefore, to claim a refund of sales tax, a taxpayer is required to demonstrate that it purchases tangible personal property from a retail merchant at a retail transaction and must substantiated that it overpays the sales tax, "a separate added amount to the consideration in the transaction." The taxpayer's claim also must be timely filed.

Throughout the protest process, Taxpayer argued that it was entitled to the refund of sales tax - paid by Landlord - during the tax years in question. Taxpayer asserted that it is in the printing business and is entitled to the statutory exemption on electricity pursuant to [IC 6-2.5-4-5](#) and [45 IAC 2.2-4-13](#). Taxpayer thus claimed that it was entitled to the refund of sales tax - paid by Landlord - because its "manufacturing and production operations were housed in a multi-tenant facility owned by the Landlord." Taxpayer provided additional documents to support its claim, including the lease agreement.

Upon review, however, Taxpayer's reliance of the statutory and regulatory provisions is misplaced. First, Landlord in this instance is the purchaser of electricity and is not a public utility. Taxpayer's supporting documents showed that Landlord is in the business of leasing and managing commercial real estate. To that end, Landlord purchased the electricity from the public utility for the commercial building it owned. During the tax years in question, Taxpayer and Landlord entered into an agreement. Landlord agreed to lease a portion of the building its owned to Taxpayer and, in exchange, Taxpayer agreed to pay rents. Landlord did not sell electricity to Taxpayer. Likewise, Taxpayer did not purchase electricity from Landlord. There was no sales of public utility services and commodities between Landlord and Taxpayer.

Second, Taxpayer has been a tenant who paid monthly rents to Landlord. Taxpayer's documents further demonstrated that contractually, both Taxpayer and Landlord agreed that the rents included operating expenses, such as "water, electricity and other utility expenses." Landlord incurred those operating expenses, which were costs of doing business. Landlord subsequently passed those expenses onto its tenants as a part of rent. Rent is defined as "[c]onsideration paid, usu. periodically, for the use or occupancy of property (esp. real property)." Black's Law Dictionary (11th ed. 2019), available at www.westlaw.com (last visited July 26, 2023). Under current Indiana law, long-term lease of real property is not a taxable retail transaction. Thus, whether Taxpayer was entitled to a statutory exemption for sales tax purposes is irrelevant.

In short, Taxpayer's supporting documents failed to substantiate that it purchased the electricity from, and paid the tax to, the public utility. As such, Taxpayer was not the taxpayer and has no standing to claim the sales tax refund in that regard. The Department is not required to address the timeliness of Taxpayer's refund claim. Taxpayer's claim that it was entitled to the statutory exemption is beyond the scope of the protest.

FINDING

Taxpayer's protest is respectfully denied.

July 27, 2023

Finding Replaces: New

Posted: 09/27/2023 by Legislative Services Agency
An [html](#) version of this document.