

Final Order Denying Refund 04-20231386
Indiana Gross Retail Tax
For the Years 2019 to 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

Indiana Research Company was not entitled to an additional refund of sales tax paid on purchases of equipment and supplies because Company failed to establish that the items were essential and integral to Company's research activities.

ISSUE

I. Gross Retail and Use Tax - Equipment and Items Integral to Taxpayer's Research and Development Activities.

Authority: [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#); [IC 6-2.5-3-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-5-40](#); *Conklin v. Town of Cambridge City*, 58 Ind. 130 (1877); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-5-10](#); [IC 6-2.5-1-27](#); Sales Tax Information Bulletin 75 (January 2023); Sales Tax Information Bulletin 75 (April 2017).

Taxpayer argues that the Department made a mistake when it denied a portion of the originally requested sales tax refund.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of conducting chemical and pharmaceutical analyses and providing its customers development and intellectual property support.

Taxpayer submitted a claim for a refund of sales tax paid on the purchase of tangible personal property used in research and development of Taxpayer's products. Taxpayer sought a refund of approximately \$210,000.

The Indiana Department of Revenue ("Department") reviewed the refund request. As a result of that review, the Department agreed that Taxpayer was entitled to a refund of approximately \$165,000 but denied the remaining \$45,000 refund amount.

In a letter dated October 2022, the Department explained why the \$45,000 refund was denied.

Denied portion for 2019, 2020, 2021, and 2022 is due to tangible personal[] property not being essential or integral to the research and development process per [IC 6-2.5-5-40](#). A portion of the 2019 amount was due to the inclusion of invoices from 2018 which is out of statute. There were also duplicate invoices found in 2020. It was also agreed upon that the computers and computer equipment are 95[percent] exempt, 5[percent] taxable.

Taxpayer disagreed with the Department on the grounds that it was entitled to the entire amount originally requested. Taxpayer submitted a protest to that effect. An administrative hearing was scheduled in order to permit Taxpayer to explain the basis for its protest. This Final Order Denying Refund results.

I. Gross Retail and Use Tax - Equipment and Items Integral to Taxpayer's Research and Development Activities.

DISCUSSION

The issue is whether Taxpayer has established that the Department was wrong when it denied Taxpayer less than 100 percent of the originally requested sales tax refund because the disputed items were essential and integral to its research activities.

A. Indiana's Sales and Use 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\(a\)](#). 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\(b\)](#). 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). 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 Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

In general, purchases of tangible personal property are subject to sales tax. [45 IAC 2.2-5-10\(a\)](#). 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. [IC 6-2.5-1-27](#). Tangible personal property also includes electricity, water, gas, steam, and prewritten computer software. *Id.*

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

B. Research and Development Sales Tax Exemption.

[IC 6-2.5-5-40](#) (effective January 1, 2016) provides a sales tax exemption for research and development ("R&D") property. The current version of [IC 6-2.5-5-40](#) provides that certain activities are not considered R&D activities and clarifies that certain activities are considered incidental to R&D activities. Sales Tax Information Bulletin 75 (January 2023), 20230125 Ind. Reg. 045230020NRA, explains:

[T] the property must be acquired by the purchaser for the purpose of research and development activities devoted to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products. See also Sales Tax Information Bulletin 75 (April 2017), 20170726 Ind. Reg. 045170335NRA.

Indiana law, [IC 6-2.5-5-40\(g\)](#), explains that a taxpayer is entitled to purchase certain items of tangible personal property without paying the gross retail tax when the property is utilized in qualifying R&D activities in the manner and to the extent provided in the law. In full, the exemption is set out in [IC 6-2.5-5-40](#) as follows:

(a) As used in this section, "research and development activities" includes design, refinement, and testing of prototypes of new or improved commercial products before sales have begun for the purpose of determining facts, theories, or principles, or for the purpose of increasing scientific knowledge that may lead to new or enhanced products. The term does not include any of the following:

- (1) Efficiency surveys.
- (2) Management studies.
- (3) Consumer surveys.
- (4) Economic surveys.
- (5) Advertising or promotions.
- (6) Research in connection with nontechnical activities, including literary, historical, social sciences, economics, humanities, psychology, or similar projects.
- (7) Testing for purposes of quality control.
- (8) Market and sales research.
- (9) Product market testing, including product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability.
- (10) The acquisition, investigation, or evaluation of another's patent, model, process, or product for the

purpose of investigating or evaluating the value of a potential investment.

(11) The providing of sales services or any other service, whether technical or nontechnical in nature.

(b) As used in this section, "research and development equipment" means tangible personal property that:

(1) consists of or is a combination of:

- (A) laboratory equipment;
- (B) computers;
- (C) computer software;
- (D) telecommunications equipment; or
- (E) testing equipment;

(2) has not previously been used in Indiana for any purpose; and

(3) is acquired by the purchaser for the purpose of research and development activities devoted directly to experimental or laboratory research and development for:

- (A) new products;
- (B) new uses of existing products; or
- (C) improving or testing existing products.

(c) As used in this section, "research and development property" means tangible personal property that:

(1) has not previously been used in Indiana for any purpose; and

(2) is acquired by the purchaser for the purpose of research and development activities devoted to experimental or laboratory research and development for:

- (A) new products;
- (B) new uses of existing products; or
- (C) improving or testing existing products.

(d) For purposes of subsection (c)(2), a research and development activity is devoted to experimental or laboratory research and development if the activity is considered **essential and integral** to experimental or laboratory research and development. The term does not include activities **incidental** to experimental or laboratory research and development.

(e) For purposes of subsection (c)(2), an activity is not considered to be devoted to experimental or laboratory research and development if the activity involves:

- (1) heating, cooling, or illumination of office buildings;
- (2) capital improvements to real property;
- (3) janitorial services;
- (4) personnel services or accommodations;
- (5) inventory control functions;
- (6) management or supervisory functions;
- (7) marketing;
- (8) training;
- (9) accounting or similar administrative functions; or
- (10) any other function that is incidental to experimental or laboratory research and development.

(f) A retail transaction:

- (1) involving research and development equipment; and
- (2) occurring after June 30, 2007, and before July 1, 2013; is exempt from the state gross retail tax.

(g) A retail transaction:

- (1) involving research and development property; and
- (2) occurring after June 30, 2013;

is exempt from the state gross retail tax.

(h) The exemption provided by subsection (g) applies regardless of whether the person that acquires the research and development property is a manufacturer or seller of the new or existing products specified in subsection (c)(2).

(Emphasis added).

C. Taxpayer's Supplemental Refund Request.

Taxpayer maintains that the Department made a mistake when it denied a refund of sales tax paid on the purchases of the following items.

- File organizer;
- Inclined desktop file sorter;
- Four drawer lateral filing cabinet;
- Extension cord;
- Horizontal cable organizer;
- Swivel task chair;

- Dry ice nuggets;
- Liquid nitrogen;
- Surge protector;
- Stand up desk converter;
- Battery backup.

Taxpayer explains that these items are essential and integral in performing its research activities. For example, Taxpayer explains:

The extension cords are "used to power the computers and other items. Without power, the computers and lab equipment will not work."

The filing aids are used by "scientist[s] to organize findings from experiments." Without these filing aids, "[P]aperwork would be misconstrued [sic] and lead to test results that are not accurate."

These two arguments are offered to explain the basis for much of its protest argument. However, a number of the listed items - such as dry ice - are not directly addressed.

One of the items cited, a "RCS90 discovery DSC 120V 60HZ," is unidentified and unaddressed.

In two instances, Taxpayer challenges the Department's decision that certain taxable transactions were out-of-statute. Taxpayer explains "that payment was made in 2019, therefore the line items [are] still in statute."

D. Weighing Taxpayer's Arguments and Explanations.

[IC 6-2.5-5-40](#) like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999). Indiana law has long held that "[W]here [] 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). (Citing *Conklin v. Town of Cambridge City*, 58 Ind. 130, 133 (1877)).

Nevertheless, the Department is also aware of the countervailing rule that a "statute must not be construed so narrowly that it does not give effect to legislative intent because the intent of the legislature embodied in a statute constitutes the law." *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991).

E. Conclusions.

Taxpayer did not explain what the "RCS90 discovery DSC 120V 60HZ" is or how it is essential and integral to its research activities. Likewise, Taxpayer did not document that the out-of-statute 2018 invoices should have been included in the 2019 refund bucket.

On the more substantive question, the Department is unable to agree that Taxpayer has established that the extension cords, desks, filing equipment and the like are essential and integral in conducting research. The Department does agree that these items are useful and necessary; researchers need desks, chairs, and filing cabinets but that does not necessarily mean that they qualify for the exemption. Although the Department is required to adhere to the meaning and spirit of the exemption, it is not permitted to roam beyond the four-corners of that exemption because these claims are not within "the exact letter of the law." *RCA Corp.*, 310 N.E.2d at 101. Therefore, Taxpayer has not established that the items in question qualify for the exemption established under [IC 6-2.5-5-40](#).

FINDING

Taxpayer's protest is respectfully denied.

August 16, 2023

Finding Replaces: New

