

Final Order Denying Refund: 04-20231633
Gross Retail (Sales) Tax
For the Tax Year 2019

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HOLDING

Retail Merchant was not entitled to a refund of sales tax because its supporting document was not verifiable; the Excel file alone was not sufficient to establish that the sales tax - a trust tax - was collected, remitted, and subsequently refunded "to the person from whom they were collected."

ISSUE

I. Sales Tax - Refund Claimed by Retail Merchant.

Authority: [IC 6-2.5-1-2](#); [IC 6-2.5-2-1](#); [IC 6-2.5-4-1](#); [IC 6-2.5-6-14.1](#); [IC 6-2.5-9-3](#); *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. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 2.2-2-1](#).

Taxpayer protests the refund denial of sales tax it remitted in 2019, claiming that it refunded the tax to its customer in 2022.

STATEMENT OF FACTS

Taxpayer is a subsidiary of a multinational company in the business of manufacturing tangible property. Taxpayer sells products and services to customers in Indiana. Taxpayer periodically files Indiana sales tax returns, reporting and remitting Indiana sales tax.

In December 2022, Taxpayer requested an approximately \$3,000 refund of sales tax it remitted in 2019. The Indiana Department of Revenue ("Department") reviewed and denied Taxpayer's refund claim.

Taxpayer protested and requested that the Department make the final determination without a hearing based on the additional documents submitted. This final determination results.

I. Sales Tax - Refund Claimed by Retail Merchant.

DISCUSSION

The Department denied Taxpayer's claim, stating that "[n]o overpayment was found for the period July 31, 2019." Taxpayer, to the contrary, claimed that it was entitled to an approximately \$3,000 refund of sales tax it remitted in 2019. The issue, therefore, is whether Taxpayer provided documentation sufficiently to support its protest that it was entitled to the tax refund. When a taxpayer challenges taxability in a specific instance, 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). 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\(a\)](#); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." [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\(b\)](#). "The person who acquires tangible person property in a retail transaction is liable for the sales tax on the transaction[.]" [IC 6-2.5-2-1\(b\)](#). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for

the state." *Id.* As an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." [IC 6-2.5-9-3\(a\)](#).

Because the retail merchant - the agent for the state - is required to collect and remit the sales tax, a trust tax, on the retail transaction from the purchaser, the retail merchant is often tasked with customer's requests of refund when customers return their purchases. [IC 6-2.5-6-14.1](#) thus provides that the "retail merchant is not entitled to a refund of state gross retail [tax] unless the retail merchant refunds [the tax] to the person from whom they were collected." Only when the retail merchant indeed refunds the sales tax, which it previously collected, to its customer, the retail merchant may then be entitled to the refund of sales tax from the state.

Taxpayer in this case is a retail merchant seeking the approximately \$3,000 refund of sales tax. Taxpayer stated the following:

Attached is an Excel file Refund [] that shows the total of the sales transactions that are involved in this refund. The first tab shows all the items for our July return. There is one invoice [xxxxxxx791] that is for two instruments[.] The [D instrument] was invoiced with the instrument and several accessories.

The sales tax was charged and remitted to the IN Department of Revenue with our July return [in 2019].

The customer returned only the [D] instrument in November 2022. The credit memo is shown on the second tab to the Refund [] spreadsheet. There was an overpayment since we did not take the credit on the November return. The total of the transactions for the month resulted in a negative balance so we could not net the credit with the invoices for the month.

We paid the funds to IN Department of Revenue and refunded the customer the money, so we are [entitled] to our refund.

To support its protest, Taxpayer only offered an Excel file. Presumably, Taxpayer relied on its Excel file to support its assertions that (1) it issued a "credit memo" to its customer concerning the sales tax in question and (2) there was "an overpayment" because Taxpayer "did not take the credit on the November return" based on its Excel spreadsheet.

Upon review, however, the Department is not able to agree. Specifically, Taxpayer's Excel file alone was not verifiable and cannot substantiate Taxpayer's above assertions. Taxpayer here engaged in more than one retail transaction and maintained various account receivables or payables. The Department is mindful that a retail merchant, during the course of its business, regularly applies payments and credits. But the retail merchant was not entitled to a refund of sales tax - a trust tax - "unless the retail merchant refund[ed] those taxes to the person from whom they were collected." [IC 6-2.5-6-14.1](#).

Taxpayer's "credit memo" listed on its Excel spreadsheet is not a tax refund, and the Excel file alone with nothing more was not sufficient to support a sales tax refund. According to Taxpayer, the sales tax was remitted in 2019. Also, according to Taxpayer, it refunded the sales tax to its customer in 2022. To verify whether the sales tax was refunded to the purchaser, additional documents, such as a canceled check, or documents which contain the details and current account balance concerning all relevant accounts must be examined together.

To conclude, Taxpayer was not entitled to the refund of the sales tax - a trust tax - it collected unless it was first refunded to the purchaser. *In the absence of other verifiable supporting documents*, the Excel file was not sufficient to substantiate that Taxpayer refunded the sales tax - a trust tax - "to the person from whom they were collected."

FINDING

Taxpayer's protest is respectfully denied.

October 27, 2023

Findings Replaces: New

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