

Final Order Denying Refund: 04-20232030
Sales and Use Tax
For The Year 2019

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

Industrial manufacturer established that its claim for refund was timely but failed to establish that the sales in question are exempt from sales tax.

ISSUE

I. Sales and Use Tax - Exemption.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-13-1](#); [IC 6-8.1-9-1](#); *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); [45 IAC 2.2-2-1](#); 22 C.F.R. § 120.1.

Taxpayer protested the Indiana Department of Revenue's ("Department") refund denial for sales tax remitted in 2019.

STATEMENT OF FACTS

Taxpayer is a manufacturer based in Pennsylvania. In November 2019, Taxpayer made multiple sales to an Indiana purchaser ("Purchaser"), and Taxpayer charged sales tax on these transactions. Taxpayer subsequently determined that the sales to Purchaser in November 2019 were not taxable sales. In a letter included with its protest, Taxpayer explained, "After that return was filed, the customer whose taxable sales generated that large amount of tax then supplied [Taxpayer] with. . .the detail that these sales were actually shipped to their freight forwarder. . ." In December 2022, Taxpayer filed an amended return seeking a refund of the sales tax it collected and remitted to Indiana. The Department subsequently denied Taxpayer's claim for refund and noted that the refund request was untimely. Taxpayer protested this denial, and an administrative hearing was held. This Order Denying Refund results. Additional facts will be provided as necessary.

I. Sales and Use Tax - Exemption.

DISCUSSION

The two issues in this protest are whether Taxpayer's claim for refund was timely, and if so, whether the sales transactions were exempt from Indiana sales tax.

Where, as here, a taxpayer is challenging the imposition of sales tax, 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). Additionally, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even 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). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Indiana law affords a taxpayer a statutory right to file a claim for refund. [IC 6-8.1-9-1\(a\)](#) provides, in part:

If 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 . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.

(2) The date of payment.

For purposes of this section, the **due date for a return filed for the state gross retail or use tax. . . is the end of the calendar year which contains the taxable period for which the return is filed.** The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

(Emphasis added).

A review of the documentation provided by Taxpayer reflects that Taxpayer filed an amended return on December 8, 2022, for the sales tax period ending November 30, 2019, requesting a refund of roughly \$33,000. Under [IC 6-8.1-9-1\(a\)](#), the due date of the return is deemed to be the end of the calendar year which contains the taxable period. In this case, the due date for the return would be December 31, 2019. [IC 6-8.1-9-1\(a\)](#) also provides that a taxpayer has three years from the later of the filing date of a return or a due date for a return. Three years from the due date was December 31, 2022. Therefore, Taxpayer's request for refund was timely filed pursuant to Indiana law.

Given that the refund request was timely, Taxpayer must now demonstrate that it qualifies for a sales tax refund. 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 merchant, even if it does not have a physical presence in Indiana, is required to collect sales tax as an agent for Indiana and remit it to Indiana as if it had a physical presence in the state. [IC 6-2.5-2-1\(d\)](#). [IC 6-2.5-13-1\(d\)\(2\)](#) provides, in relevant part:

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, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

Here, Taxpayer sold goods to Purchaser, located in Indiana, and claims those goods were received in Indiana by Purchaser's freight forwarder. Taxpayer argues that because the goods were received by a freight forwarder in Indiana and subsequently delivered overseas, these sales should not have been subject to sales tax. Taxpayer provided the Department with the invoices for these transactions. The invoices show an Indiana delivery address with the Purchaser's name, not the freight forwarder's name. Based on the documentation, the product was received by the Purchaser in Indiana. Therefore, these transactions are subject to Indiana's sales tax under [IC 6-2.5-13-1\(d\)\(2\)](#).

Additionally, Taxpayer argued that these sales "were written with the ITAR (International Traffic in Arms Regulations) description of being controlled by the US Government and authorized for export only." The International Traffic in Arms Regulations ("ITAR") "authorizes the President to control the export and import of defense articles and defense services." 22 C.F.R § 120.1. While the purchase invoices provided by Taxpayer state, "these items are controlled by the U.S. government and authorized for export only. . .", ITAR provides no guidance as to the taxability of these items or how their receipt in Indiana, or any state in the United States, effects their taxability.

Though Taxpayer has established its refund claim was timely, it has not supported its position that these transactions are exempt from Indiana sales tax because they were received by a freight forwarder and shipped overseas.

FINDING

Taxpayer's protest is denied.

December 12, 2023

Replaces Finding Document at: New

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