

Memorandum of Decision 04-20231943
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 Decision.

HOLDING

Based on verifiable supporting documents provided, Company was entitled to a \$162.12 refund and was not entitled to the remaining refund requested.

ISSUE

I. Sales and Use Tax - Refund.

Authority: [IC 6-2.5-1-14](#); [IC 6-2.5-1-14.5](#); [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#) *et seq.*; [IC 6-2.5-3-4](#); [IC 6-2.5-4-17](#); [IC 6-2.5-5](#); [IC 6-8.1-5-4](#); [IC 6-8.1-9-1](#); *Indiana Dep't of State Revenue v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. U.S. Steel Corp.*, 425 N.E.2d 659 (Ind. Ct. App. 1981); [45 IAC 2.2-5-8](#); [45 IAC 15-9-2](#).

Company argued that it was entitled to an additional refund because its purchases and use of tangible personal property were either exempt from tax or non-taxable.

STATEMENT OF FACTS

Taxpayer is a company operating a manufacturing facility in Indiana. To conduct its business, Taxpayer periodically purchases tangible personal property and remits use tax to the Indiana Department of Revenue ("Department"). Taxpayer requested a refund of tax it paid during 2019. The Department granted a partial refund based on verifiable invoices provided by Taxpayer and denied the remainder.

Taxpayer protested the partial refund denial. A hearing was held. Taxpayer's representative explained the basis of its protest and provided additional documents to support the protest. This final determination results. Additional facts will be provided as necessary.

I. Sales & Use Tax - Refund.

DISCUSSION

The Department granted a \$107,618.88 refund based on verifiable invoices provided. Taxpayer argued that it claimed a \$125,459.59 refund and the Department erred in only granting a partial refund. Therefore, the issue is whether Taxpayer sufficiently demonstrated that it was entitled to an additional refund.

A. The Law

The Department generally "has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to IC [§] 6-8.1-9-1." [45 IAC 15-9-2](#)(b). To obtain a refund, the person must file the claim with the Department "within three (3) years after the later of . . . [t]he due date of the return [or the] date of payment." [IC 6-8.1-9-1](#)(a). A claim for refund is required to be filed on a form prescribed by the Department, such as Form GA-110L. [45 IAC 15-9-2](#)(d). The claim must include certain verifiable information, such as the amount of the refund to which the person is entitled, the reasons why the person is entitled to the refund, the tax period for which the overpayment is claimed, and the year and date of the overpayment. *Id.* To that end, every person who is subject to a listed Indiana tax must keep books and records, including all source documents, "so that the [D]epartment can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." [IC 6-8.1-5-4](#)(a).

Indiana imposes a gross retail tax ("sales tax") on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. [IC 6-2.5-2-1](#) *et seq.* "Tangible personal property" includes "prewritten computer software." [IC 6-2.5-1-27](#). "Computer software" is defined as "a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task." [IC 6-2.5-1-14](#). Pursuant to [IC 6-2.5-1-14.5](#), a "[c]omputer software maintenance contract" is "a contract that obligates a person to provide a customer with future updates or upgrades of computer software." Finally, a "person is a retail merchant making a **retail transaction** when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software." [IC 6-2.5-4-17](#) (**emphasis added**).

As a general rule, all purchases of tangible personal property by persons engaged in the direct production or manufacture of tangible personal property are taxable unless specifically exempted under Indiana law. [45 IAC 2.2-5-8\(a\)](#). An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to [IC 6-2.5-3-4](#). Also, there are additional exemptions for sales and use tax, such as the manufacturing exemption, outlined in [IC 6-2.5-5](#). A statute which provides a tax exemption, however, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue 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. When a taxpayer challenges taxability in a specific instance, the taxpayer is required to provide documents 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).

B. The Initial Review and Partial Refund

Initially, the Department reviewed and found Taxpayer's 12-page worksheet attached to its claim did not support the refund request. To process Taxpayer's claim, the Department requested that Taxpayer provide verifiable supporting documentation. Taxpayer subsequently offered some invoices. Based on these invoices, the Department summarized the details in a working paper to arrive at Taxpayer's \$117,860.07 claim.

The Department granted a partial refund based on the verifiable invoices submitted by Taxpayer. The Department explained in a letter, in relevant part:

The taxpayer failed to provide the detailed claim information that supported the claim of \$125,459.59. The detail supported a claim of \$117,860.07. From the \$117,860.07 detail, the following invoices were disallowed due to items being used outside the manufacturing process, not qualifying for safety exemption or not providing a detailed invoice for inspection. . . .

As a result, the Department granted a \$107,618.88 refund and denied the remainder.

C. Taxpayer's Protest

Taxpayer protested the Department's partial denial. Taxpayer maintained that it requested a \$125,459.59 refund. Taxpayer argued that "the worksheets attached to the refund claim that was filed on December 22, 2022[,] support the full amount of said claim" - namely, Form GA-110L. Taxpayer asserted that the Department erred in reducing its refund. Taxpayer contended that the following adjustments were in error:

- 1) Indiana Safety Supply - O2 gas monitors - monitors allow the production workers to participate in the production process without injury. These items qualify for exemption under [45 IAC 2.2-5-8\(c\)\(2\)\(F\)](#);
- 2) Open Text Inc. - software (support) - [Taxpayer] maintains that the vendor provided support only;
- 3) Software House International - invoice B09680456 \$645.68 - the total use tax accrued was \$1,593.34. With respect to this invoice, [Taxpayer] claimed a refund of use tax in the amount of \$947.66. This represented the use tax erroneously self-assessed on "phone support". Therefore, the refund denial of \$645.68 related to this invoice is improper and should be adjusted accordingly;
- 4) Software House International - invoice B09455261 \$269.22 - the total use tax accrued was \$269.22 - [Taxpayer] argues that this invoice was not included in the transactions listed for Period 2 attached to the refund claim in support of said claim. As such, no adjustment should have been made;
- 5) Software House International - invoice B09584720 \$535.85 - the total use tax accrued was \$535.85 - [Taxpayer] argues that this invoice was not included in the transactions listed for Period 3 attached to the refund claim in support of said claim. As such, no adjustment should have been made;
- 6) Software House International - invoice B09604841 \$2,483.53 - the total use tax accrued was \$2,483.53 -

[Taxpayer] argues that this invoice was not included in the transactions listed for Period 3 attached to the refund claim in support of said claim. As such, no adjustment should have been made.

Throughout the protest process, Taxpayer provided additional documents to support that it was entitled to an additional refund.

D. Analysis and Conclusion

This final determination addresses each of the issues under protest, as follows:

1. Insufficient Information to Support a \$125,459.59 Refund Claim

Taxpayer argued that it requested a \$125,459.59 refund in December 2022, referencing its Form GA-110L (Claim for Refund) and "worksheets attached to the refund claim." Taxpayer asserted that the Department erred in stating that "[t]he detail[s] supported a claim of \$117,860.07." At the hearing, Taxpayer's representative offered a one-page summary ("Summary") and a 12-page worksheet to support its protest.

Upon review, however, Taxpayer is mistaken. As mentioned earlier, Taxpayer's original 12-page worksheet failed to support the \$125,459.59 claim. In this case, Taxpayer's Summary contained a "Period Total" column and a "Difference" column, but it did not offer any information about the \$125,459.59 claim. The Summary was not attached to Taxpayer's original refund request and was not provided to the examiner during the initial review before issuance of the partial refund.

Upon further review of the Department's record, Taxpayer's "worksheets attached to the refund claim" only summed up to a total of a \$114,753.83 request: Period 1 (\$1,456.31), Period 2 (\$13,056.62), Period 3 (\$25,533.84), Period 4 (\$10,740.25), Period 5 (\$6,289.15), Period 6 (\$11,327.92), Period 7 (\$11,804.77), Period 8 (\$3,217.10), Period 9 (\$16,860.95), Period 10 (\$6,190.14), Period 11 (\$4,778.68), and Period 12 (\$3,498.11).

It should be noted that Taxpayer's Summary contained a \$10,705.76 "Intercompany charge for corporate software." When \$114,753.83 is subtracted from \$125,459.59, the result is \$10,705.76. This \$10,705.76 intercompany charge was not connected to and was not included in any period of the 12-page worksheet. The Summary seemingly suggested that Taxpayer received a \$10,705.76 refund. Taxpayer is mistaken.

In this case, Taxpayer did not provide any documents to support its \$10,705.76 request (i) when it submitted the GA-110L in 2022, (ii) during the initial review before issuance of the partial refund, or (iii) throughout the protest process. Taxpayer's reliance of its Summary and the 12 worksheets to support the \$125,459.59 claim is misplaced. Taxpayer's protest of this issue, including the inexplicable \$10,705.76 refund request, is denied.

2. Open Text Inc.

The Department denied the refund regarding Open Text Inc. because the invoice showed that Taxpayer purchased "[s]oftware maintenance with updates." As such, Taxpayer purchased was subject to sales and use tax.

Taxpayer's representative argued that "the vendor provided support only[.]" The Department, however, is not able to agree. Specifically, the invoice in question showed that the transaction was for "Annual Mtc [] Mapping W/B" and "Maint[enance] Standard for Unix." As discussed in Part A, sale of a computer software maintenance contract is a retail transaction subject to sales and use tax pursuant to [IC 6-2.5-4-17](#). Taxpayer in this case did not provide any verifiable documents, such as contracts or agreements, to substantiate that it only purchased support and did not purchase a computer software maintenance contract. Taxpayer's protest of this issue is denied.

3. Sage Software Inc.

The Department denied a \$162.12 refund request concerning a transaction from Invoice Number 908283788 for an item sold by vendor Sage Software Inc. because "[n]o invoice [was] provided." Taxpayer provided the invoice in question to support its protest.

The Department reviewed Taxpayer's supporting document and is prepared to agree that the \$162.12 refund request should be granted. Taxpayer's protest of this item is sustained.

4. Software House International

Taxpayer protested the Department's refund denial concerning Invoice Numbers B09467347, B09680456, B09455261, B09584720, and B09604841 for items sold by a vendor, Software House International, based on various reasons.

First, the Department denied the refund concerning Invoice Number B09467347 because that invoice was for "[s]oftware maintenance with updates." Taxpayer argued that "the vendor provided support only[.]" The Department is not able to agree. The invoice showed that the transaction was for "Software Agreement No.: [] Maintenance From Date []2019 Maintenance To Date []2020." As discussed in Part A, sale of a computer software maintenance contract is a retail transaction subject to sales and use tax pursuant to [IC 6-2.5-4-17](#). Taxpayer did not provide any verifiable documents, such as contracts or agreements, to substantiate that it only purchased support and did not purchase a computer software maintenance contract. Taxpayer's protest of this issue is denied.

Next, Taxpayer asserted that the Department erred in denying a \$645.68 refund concerning the transaction of Invoice Number B09680456. According to Taxpayer, "the total use tax accrued was \$1,593.34" and it only requested a \$947.66 refund. It should be noted that the \$645.68 amount was the difference between the amount accrued (\$1,593.34) and the refund requested (\$947.66). As mentioned earlier, the Department reviewed the claim based on the invoices provided, not the worksheets attached to Taxpayer's refund claim, GA-110L. The Department denied the \$645.68 request because Taxpayer's invoice showed that the \$645.68 payment was paid for software maintenance with updates. Since Taxpayer did receive the exact \$947.66 refund it requested as a result, the issue with respect to this invoice is moot.

As to Invoice Numbers B09455261, B09584720, and B09604841, Taxpayer stated that these invoices were "not included in the transactions listed [in its worksheets] attached to the refund claim in support of said claim." Since Taxpayer did not include them in its initial request, the issue under protest is also moot.

In summary, Taxpayer is not entitled to an additional refund concerning Invoice Numbers B09467347, B09680456, B09455261, B09584720, and B09604841.

5. O2 Gas Monitors

Taxpayer argued that the Department erred in denying the refund because "O2 gas monitors [] allow the production workers to participate in the production process without injury [and] qualify for exemption under [45 IAC 2.2-5-8\(c\)\(2\)\(F\)](#)."

[45 IAC 2.2-5-8\(c\)](#) explains:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., **they have an immediate effect on the article being produced**. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

--EXAMPLES--

...

(2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.

...

(F) **Safety** clothing or **equipment which is required to allow a worker to participate in the production process without injury** or to prevent contamination of the product during production.

(Emphasis added).

[45 IAC 2.2-5-8\(g\)](#) further states:

"Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax. Component parts of a unit of machinery or equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of such manufacturing unit.

The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced." Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

(Emphasis added).

In *Indiana Dep't of State Revenue v. U.S. Steel Corp.*, the taxpayer substantiated its purchase and use of personal protective equipment - including prescription safety eyeglasses, hardhats, masks, goggles, and protective mittens - were exempt from tax because "the safety equipment is an integral part of manufacturing and operates directly on the product during production." *Indiana Dep't of State Revenue v. U.S. Steel Corp.*, 425 N.E.2d 659 (Ind. Ct. App. 1981). Acknowledging that the "U.S. Steel's safety equipment was one of the tools used by workers to accomplish the job," The *U.S. Steel* court concluded that:

Since steel can be made only because shielded workers deal directly with the raw materials of the product, the shields not only protect the worker but are a part of manufacturing which operates directly on the product during production.

Id. at 664.

Accordingly, to qualify for this exemption, the safety equipment must "have an immediate effect on the article being produced." Or, alternatively, the equipment "is an essential and integral part of an integrated process which produces tangible personal property." That is, the item in question is required to be "an integral part of manufacturing and operates directly on the product during production."

To support its protest, Taxpayer offered a product photo and an affidavit, which stated, in part:

2. During [2019], I held the position of Financial Analyst.
3. As Financial Analyst, I have personal knowledge of [Taxpayer] operations. Moreover, I have access to employee information including, but not limited to, the department to which each employee is assigned.

...

5. The O2 monitors were used by production and non-production employees. The exempt percentage shown in the excel spreadsheets submitted to the Indiana Department of State Revenue was determined based on an examination of employee headcount. The numerator equals the number of production employees and the denominator equals total employees.
6. The O2 monitors are used to detect the presence of oxygen in the air. The device is designed to be used in hazardous environments where there is a risk of oxygen deficiency or excess. It is equipped with an audible, visual, and vibrating alarm that alerts the user when the oxygen level in the air falls below or exceeds the preset threshold.

Upon review, Taxpayer's document stated that the "O2 monitors were used by production and non-production employees" and "are used to detect the presence of oxygen in the air." Therefore, the O2 monitors did not have an immediate effect upon the article being produced. Additionally, unlike the taxpayer in *U.S. Steel* which showed that the safety equipment was one of the tools used by workers to accomplish the job during its production process, Taxpayer failed to do so. Instead, Taxpayer in this case documented that it used the O2 monitors to monitor the air quality in hazardous environments for the health of all employees, regardless of production or otherwise. Thus, Taxpayer's reliance of its documentation and [45 IAC 2.2-5-8\(c\)\(2\)\(F\)](#) is misplaced.

As mentioned earlier, "[t]he fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property 'has an immediate effect upon the article being produced.'" To qualify for the exemption under [45 IAC 2.2-5-8\(c\)\(2\)\(F\)](#), the safety equipment is required to be "an integral part of manufacturing and operates directly on the product during production." Taxpayer's protest of the O2 gas monitors is denied.

To conclude, Taxpayer's supporting documents demonstrated that it was entitled to the \$162.12 refund regarding the transaction of Invoice Number 908283788. Taxpayer's documents, however, failed to substantiate that it was entitled to the remaining refund.

FINDING

Taxpayer's protest is sustained in part and respectfully denied in part. Taxpayer was entitled to the \$162.12 refund.

February 9, 2024

Replaces Finding Document at: New

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An [html](#) version of this document.