DEPARTMENT OF STATE REVENUE

04-20171208R.ODR

Final Order Denying Refund: 04-20171208R
Sales and Use Tax
For Tax Year 2015

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 is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Purchase made by a third party management company was incorrectly filed as a refund request by a hospital.

ISSUE

I. Sales and Use Tax–Refund.

Authority: IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of its claim for refund.

STATEMENT OF FACTS

Taxpayer is a hospital. Taxpayer uses a "third party manager" company for performing "certain administrative duties." A claim for refund (GA-110L) was filed in Taxpayer's name by the third party management company. The Indiana Department of Revenue ("Department") denied the refund claim. A protest was filed by the third party management company, which also provided a Power of Attorney form (POA-1) that it was representing Taxpayer in the protest. This written ruling results. Further facts will be presented as required.

I. Sales and Use Tax–Refund.

DISCUSSION

The Department initially notes that, "[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.'" *Dept. 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, as well as all the Department's previous decisions, shall be entitled to deference.

The Department's October 12, 2017 denial letter states in relevant part that Taxpayer's refund claim was being denied pursuant to IC § 6-8.1-9-1. That statue states in pertinent part:

> (a) 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. Except as provided in subsections (j) and (k), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter 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, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance 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.

The Department's denial letter states, "IC 6-8.1-9-1 provides in part: If a person has paid more tax than due . . . he may file a claim for refund. In this particular situation the individual that created the taxable event, the purchase of the merchandise is not the person applying for the refund."

The following are the facts of Taxpayer's protest: the GA-110L which generated this specific protest was dated

September 21, 2017 and listed the hospital as the taxpayer; after the refund claim was denied in an October 12, 2017 letter, a protest was filed by the third party management company as hospital's POA; in a letter dated September 1, 2017 the POA states that the "[h]ospital acquired the property and paid for the property with its own funds. The Taxpayer believes that it has been erroneously charged the state gross retail sales tax" because the "purchases were exempt from sales tax under IC § 6-2.5-5-25 . . . ." Taxpayer also states it is providing the Department with "Form ST-105 from the Nonprofit Hospital that is the ultimate consumer of the equipment delivered and used in the nonprofit facility" and that the "[h]ospital is requesting a refund of sales tax paid on the attached invoices."

The problem with the protest is in effect one of standing–the *hospital* is requesting the refund at issue in the protest, *but the invoice states that the equipment was sold to the third party management company*. Nothing in Taxpayer's subsequent correspondence to the Department overcomes this standing issue (the Department also notes that it is not clear that the spreadsheet the POA provided the Department is germane to the protest; if it is, it was incumbent upon Taxpayer to properly explain what specifically was relevant in the assorted spreadsheet tabs and show how it relates to the protest). The POA's letter asserts that Taxpayer (i.e., the hospital) "paid for the property with its own funds," but the invoice shows the third party management company as the purchaser ("sold to") and the third party management company in facts states that "in many cases, the management company will pay the invoice from its own bank account." Thus Taxpayer has not established that it has standing to file a refund claim for an invoice which states the product was "sold to" the third party management company.

FINDING

Taxpayer's protest is denied.

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