

## DEPARTMENT OF STATE REVENUE

04-20210027.MOD

**Memorandum of Decision: 04-20210027**  
**Use Tax**  
**For the Years 2017 through 2020**

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 Memorandum of Decision.

**HOLDING**

The Department agreed with Retailer that it submitted information sufficient to allow the Department to review Retailer's request for a refund of use tax paid on the purchase of plastic bags and other non-returnable packaging materials.

**ISSUE**

**I. Use Tax - Refund of Use Tax Paid on the Purchase of Packaging Materials.**

**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 § 6-2.5-5-9; *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); [45 IAC 2.2-5-10\(a\)](#).

Taxpayer argues that it is entitled to a refund of use tax paid on the purchase of wrapping materials and that the Department's decision denying the refund was wrong.

**STATEMENT OF FACTS**

Taxpayer operates retail stores throughout the United States and in Indiana. Taxpayer purchased plastic bags and nonreturnable materials from a related entity without paying sales tax. As Taxpayer made those purchases, it accrued use tax on the price paid the related entity. However, Taxpayer eventually decided that it was entitled to purchase the plastic bags and nonreturnable packaging without paying sales tax or accruing use tax.

Taxpayer submitted a form GA-110L, Claim for Refund, seeking the return of the use tax paid on the purchase of the materials. The Department reviewed the refund claim and sent Taxpayer a letter requesting additional information. The request went unanswered and the Department issued Taxpayer a letter dated December 31, 2020, denying the refund.

The December letter explained that the refund was being denied because "Taxpayer failed to provide the requested information to support the validity of the refund claim."

Taxpayer disagreed with the decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted by video conference during which Taxpayer's representatives explained the basis for the protest. This Memorandum of Decision ("MOD") results.

**I. Use Tax - Refund of Use Tax Paid on the Purchase of Packaging Materials.**

**DISCUSSION**

The only issue is whether Taxpayer has now supplied information sufficient to warrant the Department reexamining Taxpayer's request for a refund of use tax accrued on the purchase of non-returnable wrapping materials.

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).

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.

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).

However, Indiana also provides an exemption set out in IC § 6-2.5-5-9 which provides the following exemption at subsection (d) for "nonreturnable containers."

Sales of wrapping material and empty containers are exempt from the state gross retail tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for:

- (1) selling the contents that the person adds; or
- (2) shipping or delivering tangible personal property that:
  - (A) is owned by another person;
  - (B) is processed or serviced for the owner; and
  - (C) will be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in the owner's business of manufacturing, assembling, constructing, refining, or processing.

[IC 6-2.5-5-9](#), 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). Nevertheless, the Department is well 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).

The stated - and only - reason that the Department denied Taxpayer's refund request was that it had failed to supply sufficient documentation establishing that it was entitled to the refund. Taxpayer explains that although both the Department's letter requesting further information and the December denial letter were properly addressed, the letters were never received by a person within the organization equipped to respond.

Taxpayer believes that it has overcome that shortcoming. Taxpayer supplied journal entries from its accounting system which document the purchases made from its related entry, where the expense was recorded, and an "expensed account" which details the accrued use tax. The information also provides each store number along with an "identifier to decipher whether the line item relates to tax or the cost of the [materials]."

Taxpayer has established that the materials in question qualify for the exemption provided under IC § 6-2.5-5-9. In the course of the protest process, Taxpayer also was able to provide the materials the Department originally requested at the initial refund review stage.

### FINDING

On the sole issue of whether Taxpayer has provided information sufficient to justify a reexamination of Taxpayer's refund request, Taxpayer's protest is sustained.

April 6, 2021

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