

DEPARTMENT OF STATE REVENUE

04-20211025.MOD

Memorandum of Decision: 04-20211025
Sales Tax
For The Tax 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 Memorandum of Decision.

HOLDING

Business was entitled to a refund of Indiana sales tax on graphic stickers purchased for use on its semi-trucks and trailers. Items are exempt because they are used in public transportation or are required under federal law.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-8.1-9-1; IC § 6-2.5-2-1; IC § 6-2.5-13-1; IC § 6-2.5-5-27; *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dept. of State Revenue v. Indianapolis Transit System*, 356 N.E.2d 1204 (Ind. Ct. App. 1976); *Indiana Dept. of State Revenue, Gross Income Tax Div. v. Indiana Harbor Belt R. Co.*, 460 N.E.2d 170 (Ind. Ct. App. 1984); 49 CFR § 390.21; [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-61](#); Sales Tax Information Bulletin 12 (Sept. 2019); Black's Law Dictionary (11th ed. 2019).

Taxpayer protests the refund denial of sales tax collected at the time of the sale.

STATEMENT OF FACTS

Taxpayer is an out-of-state company providing transportation services throughout North America. The company is certified as a common carrier of tangible personal property by the Interstate Commerce Commission. Taxpayer paid sales tax on multiple purchases made in 2018, 2019, 2020, and 2021.

In June 2021, Taxpayer filed a claim for refund of approximately \$25,000 paid in sales tax for 2018-21. The Indiana Department of Revenue ("Department") reviewed the claim and the supporting documentation. A partial refund was issued. Taxpayer filed a protest related to the partial denial and requested resolution without a hearing. This Memorandum of Decision results. Further facts will be provided as necessary.

I. Sales Tax - Refund.

DISCUSSION

Taxpayer protests the partial denial of its claim for refund of sales tax paid on certain purchases of tangible personal property in 2019. In denying a portion of the claimed refund, the Department determined Taxpayer was not entitled to a refund. In its refund denial letter, the Department stated:

Advertising materials are not exempt. For more information see Sales Tax Bulletin #12 page 4.

Taxpayer argued it is entitled to an additional refund of approximately \$1,400 in sales tax paid on certain purchases it made in 2019 because the items are exempt and required by federal law.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute 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.

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 sale is sourced to Indiana and subject to Indiana sales tax when the transaction is a "retail sale" and the product is received by the purchaser at the business' location in

Indiana. IC § 6-2.5-13-1(d)(1). A retail merchant that has a physical presence in Indiana shall collect the tax as an agent for the State. IC § 6-2.5-2-1(b).

Tax exemptions are strictly construed against the taxpayer. *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The taxpayer has the burden of establishing qualification under the terms of the exemption. *Id.*

IC § 6-2.5-5-27(a) provides an exemption from sales tax for transactions involving tangible personal property and services if the person acquiring the property or service directly uses or consumes the property or service in providing public transportation. "Public transportation" is defined as "the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier. . .by highway. . .which carriers operate under authority issued by. . .the Interstate Commerce Commission." [45 IAC 2.2-5-61\(b\)](#); see also Sales Tax Information Bulletin 12 (Sept. 2019) 20191030 Ind. Reg. 045190550NRA.

The exemption related to public transportation is more broadly construed than manufacturing exemptions. *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 484 (Ind. Tax Ct. 2012). The broader application of the public transportation exemption stems from the "single directness requirement" language in the statute. *Indiana Dept. of State Revenue v. Indianapolis Transit System*, 356 N.E.2d 1204, 1208 (Ind. Ct. App. 1976). Indianapolis Transit System argued, and the Court agreed, that items were exempt based on the wide range of services the company provided to its customers. *Id.* at 1209. Services provided involved "much paper work such as publications concerning financial matters, insurance, schedules, routes and rates." *Id.* The company was also required to provide "passenger stations, handle baggage, sell tickets and buses must be clean and safe for the passengers." *Id.* Items associated with this broad interpretation of being "used or consumed" while providing public transportation were deemed exempt from sales tax. *Id.*

Additionally, Indiana courts have determined that the "rendering of public transportation" is a "continuous process." *Indiana Dept. of State Revenue, Gross Income Tax Div. v. Indiana Harbor Belt R. Co.*, 460 N.E.2d 170, 175 (Ind. Ct. App. 1984).

"An item need not be in direct contact with the rails to be directly used or consumed in the rendering of transportation. A railroad is a system and, in order for the railroad to provide effective transportation, all elements of that system must be furnished including, but not limited to, maintaining railroad lines, transportation workers and maintaining supply and repair facilities." *Id.*

"A common carrier's activities to comply with legal requirements are necessary and integral to furnishing public transportation." *Wendt* at 487. The exempt tangible personal property must be reasonably necessary to the rendering of public transportation and "indispensable and essential" in the direct transportation of property. [45 IAC 2.2-5-61\(c\)](#). Items specifically exempt from sales tax include "roadway machinery and equipment" and "equipment and items purchased to meet federal requirements." [45 IAC 2.2-5-61\(d\)](#).

49 CFR § 390.21(a) and (b) require a commercial motor vehicle to be marked with the "legal name or a single trade name of the motor carrier," the USDOT number, and any other identifying information not inconsistent with the requirements under the code. The markings must be on both sides of the commercial motor vehicle, sharply contrast with the background, be readily legible during daylight hours, and maintained to comply with these statutory requirements. 49 CFR § 390.21(c).

Taxpayer protests the Department's denial of refund for the sales tax paid on graphic stickers placed on the sides of its semi-trucks and trailers. Taxpayer argues it is entitled to a refund on these purchases because the stickers are required by law, 49 CFR Parts 385 and 390, under the Federal Motor Carrier Safety Administration ("FMCSA"). Three transactions made in August 2019 and October 2019 are the only transactions protested. In support, Taxpayer provided copies of invoices and information related to the FMCSA requirements.

Taxpayer's purchase of graphic stickers is exempt from sales tax under 49 CFR § 390.21 and [45 IAC 2.2-5-61\(d\)](#) and the broad exemption provided to items used or consumed in public transportation. Purchased items included stickers with the company's name and logo, annual inspection decals, caution wide turn decals, "do not exceed 90-degree jackknife" decals, and other identifying decals. A "tradename" is defined as a "name, style or **symbol used to distinguish a company, partnership, or business** (as opposed to a product or service); **the name under which a business operates.**" Black's Law Dictionary (11th ed. 2019) (**emphasis added**). Tradenames are also known as "brand names" or "commercial names." *Id.* "Advertising" is defined as "the action of drawing the public's attention to something to promote its sale." *Id.* Stickers such as the company's name and logo and annual inspection details are required under federal law and clearly exempt. The remaining stickers, while not required by

federal or state law, can be classified as "safety stickers." Using the broad interpretation of items "directly used or consumed" in public transportation as discussed in *Indianapolis Transit System* and *Indiana Harbor Belt R. Co.*, the "safety stickers" are also exempt. Such safety items are even more inherent in the operation of Taxpayer's business of public transportation than types of items discussed in *Indianapolis Transit System* such as "schedules, routes, and rates." The stickers are not "advertising materials" as previously labeled by the Department.

Taxpayer provided documentation related to the three purchases for graphic stickers made in August 2019 and October 2019. The August purchase consisted of company name and logo graphic stickers and various inspection and safety decals. The first October purchase consisted of company logo graphic stickers. The second October purchase was virtually identical to the August purchase. The refund request for these three transactions was initially denied by the Department as advertising materials. As explained above, Taxpayer has provided sufficient documentation and explanation to demonstrate the items purchased are not advertising materials, and it is entitled to a refund for these transactions.

FINDING

Taxpayer's protest is sustained.

February 15, 2022

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