

**Letter of Findings: 07-0015
Indiana Gross Retail Tax
For 2004**

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ISSUE

I. Sales and Use Tax – Automobile Purchase

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-2; IC § 6-2.5-5-15 (Repealed, P.L. 81-2004, Sec. 60.); *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002).

Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

Taxpayer has a residence in Indiana and one in Florida. In June 2004, Taxpayer purchased an automobile from an Indiana dealership without paying Indiana sales tax. In July of 2004, Taxpayer paid Florida "state sales tax" through the mail. In September of 2004, the automobile was transported from Indiana to Florida. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed use tax for the 2004 tax year. Taxpayer protested the imposition of use tax on the purchase of the automobile. An administrative hearing was held and this Letter of Findings results.

DISCUSSION

I. Sales and Use Tax – Automobile Purchase

Taxpayer asserts that no use tax was due because Taxpayer is a Florida resident. Taxpayer maintains that by residing in Florida for over six months during the 2004 tax year and acquiring a Florida driver's license, Taxpayer became a full-year Florida resident and is no longer considered a part-year Indiana resident. Taxpayer also asserts that since Florida sales tax was paid through the mail three weeks after the vehicle's purchase and that Florida license plates were transferred from a previously owned automobile to the vehicle at issue, no use tax was due on the purchase of the vehicle.

Indiana imposes a sales tax on retail transactions and a complimentary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. The use tax is imposed 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).

At the time of purchase, Taxpayer presented a Form ST-137 entitled "Certificate of Exemption for an Out-of-State Delivery of Motor Vehicle, Manufactured Home, Aircraft, Watercraft or Trailer to be Registered and/or Titled Outside the State of Indiana." The ST-137 was used to claim an exemption under IC § 6-2.5-5-15. This statute exempts from sales tax "transactions involving motor vehicles" if "upon receiving delivery of the motor vehicle..., the person **immediately** transports it to a destination outside Indiana... to be titled or registered for use in another state." IC § 6-2.5-5-15 (Repealed, P.L. 81-2004, Sec. 60.) (**Emphasis added**). Thus, Taxpayer's residency is irrelevant in this matter, and whether or not Taxpayer qualifies for this exemption depends upon the motor vehicle's immediate removal from Indiana.

In 2004, in response to the Tax Court's decision in *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002), which declared that the denial of a credit for sales and use tax paid to another state on the out-of-state purchase of a vehicle later brought into Indiana was unconstitutional, IC § 6-2.5-5-15 was repealed and the ST-137 was eliminated. See *Id.* at 1050. However, the Tax Court's decision in *Rhoads* is inapplicable under the circumstances presented by Taxpayer. Taxpayer did not purchase the automobile in Florida, transport it to Indiana, and then claim an Indiana credit for the amount of sales tax paid to Florida.

In fact, Taxpayer purchased the motor vehicle in Indiana in June and retained the motor vehicle at Taxpayer's Indiana residence until it was transported to Taxpayer's Florida residence in September. Taxpayer failed to comply with IC § 6-2.5-5-15 by retaining the vehicle in Indiana and not immediately transporting the vehicle outside of Indiana. Taxpayer's decision to pay sales tax through the mail to Florida three weeks after the purchase does not have a "reach-back" effect negating the Taxpayer's responsibility to pay the sales tax at the time of purchase. Taxpayer's purchase of the motor vehicle was like any other retail transaction. Accordingly, Indiana sales tax was due at the time the automobile was purchased, and Taxpayer incurred its sales tax liability at the time of purchase and possession of the vehicle. Thus, Taxpayer's proper course of action was to pay the Indiana sales tax and apply for credit against any Florida use tax liability when titling the vehicle in Florida.

FINDING

Taxpayer's protest is respectfully denied.

