

**Letter of Findings: 09-0530
Sales and Use Tax
For the Tax Year 2006**

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ISSUE

I. Sales and Use Tax—Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-5-15 (repealed July 1, 2004); IC § 6-2.5-8-8; IC § 6-8.1-5-1; Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); Commissioner's Directive 25 (July 2004); Sales Tax Information Bulletin 28 (July 2004); Sales Tax Information Bulletin 28S (May 2007); Sales Tax Information Bulletin 28S (February 2008).

Taxpayer protests the assessment of sales and use tax on a motorcycle.

STATEMENT OF FACTS

Taxpayer is a Colorado resident that on July 5, 2007, purchased a motorcycle from an Indiana automobile dealer. Taxpayer took possession of the motorcycle at the Indiana dealership and completed the transaction without paying sales tax. An exemption certificate demonstrating that the purchaser claimed an exemption from the sales and use tax was provided to the Indiana Department of Revenue (Department) by the seller. The Department later determined that the purchase of the motorcycle did not qualify for an exemption from sales and use tax and assessed Indiana use tax, interest, and penalty. Taxpayer protested the assessment of the tax. An administrative hearing was conducted, and this Letter of Findings results.

I. Sales and Use Tax—Imposition.

DISCUSSION

In accordance with IC § 6-2.5-2-1(a), a sales tax, known as state gross retail tax, is imposed on Indiana retail transactions. IC § 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property for consideration in Indiana. IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in [IC 6-2.5-4-1](#)... or that is described in any other section of [IC 6-2.5-4](#)." IC § 6-2.5-2-1(b) provides that the person who acquires the property in a retail transaction is liable for the tax on the transaction and must pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a).

There are number of statutory exemptions from the sales and use tax. IC § 6-2.5-5 et. seq. In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

Pursuant to IC § 6-2.5-8-8(a), a person who makes a purchase in a transaction which is exempt from the sales and use tax may issue an exemption certificate to the seller instead of paying the tax and the seller would have no duty to collect the tax on the purchase. In this instance, the seller provided the Department an exemption certificate indicating that the purchaser claimed an exemption from the sales and use tax at the time of purchase.

Taxpayer maintains that the motorcycle purchase is not subject to Indiana sales and use tax. Taxpayer supports his claim with two assertions. Taxpayer asserts that since he initiated the purchase over the Internet and immediately left Indiana with the motorcycle, the motorcycle purchase is not subject to Indiana sales and use tax. Alternatively, Taxpayer asserts that his signature on the exemption certificate must have been forged by the automobile dealer, and as a victim of fraud his purchase is not subject to Indiana sales and use tax. Taxpayer claims that he did not sign an exemption certificate and that the dealership's website indicated that the purchase would not be subject to sales tax.

As to Taxpayer's first assertion, presumptively Taxpayer is referring to an exemption from Indiana sales and use for out-of-state customers that is not longer in effect. IC § 6-2.5-5-15 (repealed July 1, 2004) originally exempted sales of vehicles to out-of-state customers that immediately left the state of Indiana and titled the property in another state. The Department issued Commissioner's Directive 25 (July 2004) and Sales Tax Information Bulletin 28 (July 2004) to address the change in law. Commissioner's Directive 25 stated that the repeal of IC § 6-2.5-5-15 "only affect[ed] situations where the purchaser [took] possession of the vehicle prior to taking the vehicle out-of-state." The Directive stated that:

[The] repeal does not affect out of state sales by dealers. For a sale of a vehicle to be considered out of state, the purchaser must take possession via delivery outside of Indiana. No exemption certificate is required when making an out of state sale. However, the sales contract must specify that the vehicle is to be delivered out of state and the dealer must maintain shipping documentation to verify that the vehicle was delivered to the purchaser at a specific out of state location.

Sales Tax Information Bulletin 28 provided that the dealer was required to collect the tax and provide form ST-108 to the purchaser to show that the tax had been paid in Indiana. If the purchaser claimed an exemption, form ST-108E was to be completed and signed by the purchaser with a copy to be retained by the dealer.

Sales Tax Information Bulletin 28 was updated in May of 2007 becoming Sales Tax Information Bulletin 28S (May 2007). The language from the previous bulletin was removed and the following added.

A vehicle or trailer sold in interstate commerce is not subject to the Indiana sales tax. To qualify as being "sold in interstate commerce" the vehicle or trailer must be physically delivered, by the selling dealer, to a delivery point outside Indiana. The delivery may be made by the dealer or the dealer may hire a third party carrier. Terms and method of delivery must be indicated on the sales invoice. The dealer must document terms of delivery and must keep a copy of such terms of delivery to substantiate the interstate sale. The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third party carrier to transport the vehicle or trailer outside Indiana. If the buyer hires the carrier, the carrier is acting as an agent for the buyer, and thus the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale. See also Sales Tax Information Bulletin 28S (February 2008).

In the instant case, regardless of whether the transaction may have been initiated over the Internet, the property was transferred to Taxpayer in Indiana where Taxpayer took possession of the motorcycle. Since Taxpayer took possession of the motorcycle in Indiana, Taxpayer purchased a motorcycle in an Indiana retail transaction that is subject to Indiana sales and use tax. As to Taxpayer's second assertion, regardless of whether Taxpayer's signature was forged, Taxpayer as the purchaser of the motorcycle in an Indiana retail transaction is subject to Indiana sales and use tax and is liable for the tax due to Indiana. Moreover, this is neither the proper venue for Taxpayer to assert a claim of fraud against an automobile dealer nor the proper venue for Taxpayer to make a claim of an alleged sales contract dispute.

FINDING

Taxpayer's protest is respectfully denied.

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