

**Letter of Findings Number: 04-20130525**  
**Sales/Use Tax**  
**For Tax Year 2012**

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**ISSUE**

**I. Sales/Use Tax--Vehicle.**

**Authority:** IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-5-1; IC § 6-2.5-3-2; IC § 6-2.5-3-6; IC § 6-2.5-5-15.5; Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); [45 IAC 2.2-3-5](#).

Taxpayer protests the assessment of tax on a vehicle.

**STATEMENT OF FACTS**

Taxpayer is an individual. A company owned by Taxpayer, hereinafter referred to as "Company M," owned a vehicle. Taxpayer's spouse also works at Company M. The title of the vehicle was transferred by Company M to Taxpayer in 2012. The Department issued a proposed assessment for "Consumer Use" tax, as well as penalty and interest, on the transfer of title of the vehicle. Taxpayer filed a protest. A telephone hearing was conducted and this Letter of Findings ("LOF") results. Further facts will be supplied as required.

**I. Sales/Use Tax--Vehicle.**

**DISCUSSION**

At the outset, the Department notes that under IC § 6-8.1-5-1(c): "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." The Department also notes that the rules of statutory construction require that exemption statutes be strictly construed against the Taxpayer. Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

Pursuant to the Indiana Code, a sales tax ("gross retail tax") is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-2-1; IC § 6-2.5-5-1 et seq. Also, a complementary excise tax "known as 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).

IC § 6-2.5-3-6 states:

(a) For purposes of this section, "person" includes an individual who is personally liable for use tax under [IC 6-2.5-9-3](#).

(b) The person who uses, stores, or consumes the tangible personal property acquired in a retail transaction is personally liable for the use tax.

(c) The person liable for the use tax shall pay the tax to the retail merchant from whom the person acquired the property, and the retail merchant shall collect the tax as an agent for the state, if the retail merchant is engaged in business in Indiana or if the retail merchant has departmental permission to collect the tax. In all other cases, the person shall pay the use tax to the department.

(d) Notwithstanding subsection (c), a person liable for the use tax imposed in respect to a vehicle, watercraft, or aircraft under section 2(b) of this chapter shall pay the tax:

(1) to the titling agency when the person applies for a title for the vehicle or the watercraft;

(2) to the registering agency when the person registers the aircraft; or

(3) to the registering agency when the person registers the watercraft because it is a United States Coast Guard documented vessel;

unless the person presents proof to the agency that the use tax or state gross retail tax has already been paid with respect to the purchase of the vehicle, watercraft, or aircraft or proof that the taxes are inapplicable because of an exemption under this article.

(e) At the time a person pays the use tax for the purchase of a vehicle to a titling agency pursuant to subsection (d), the titling agency shall compute the tax due based on the presumption that the sale price was the average selling price for that vehicle, as determined under a used vehicle buying guide to be chosen by the titling agency. However, the titling agency shall compute the tax due based on the actual sale price of the vehicle if the buyer, at the time the buyer pays the tax to the titling agency, presents documentation to the titling agency sufficient to rebut the presumption set forth in this subsection and to establish the actual selling price of the vehicle. (Emphasis added).

In a letter to Taxpayer the Department stated:

A review of the title transactions and sales tax collected by the Indiana Bureau of Motor Vehicles (BMV) on the date [ ]/2012 discloses that you obtained a vehicle with a zero selling price from [Company M].

Our documentation has your spouse identified as a related party to [Company M]. This makes this

transaction not arms length and the price reported to the BMV a misrepresentation of the value involved. This vehicle title transfer should have been transacted and reported at fair market value. A corporation stands as a separate entity from any owner, officer or employee.

Taxpayer's protest letter states in its entirety:

I wish to protest this assessment. This was not a sale. The vehicle was owned by [Company M]. [Company M] is a corporation for a [] business which had two employees. One of which was my husband. It now has no employees. The corporation has not been dissolved but is doing very little. I own all the shares of stock in the corporation. This is simply a matter of transferring ownership from a corporation that I own to me as an individual.

As the Department's letter noted, Company M is a separate entity from its owner. And that relationship, between company and company's owner, does not qualify under IC § 6-2.5-5-15.5 for exemption from tax:

A transaction involving a motor vehicle is exempt from the state gross retail tax, if:

(1) the transaction consists of changing the motor vehicle title to add or delete an individual; and

(2) the individual being added or deleted is the spouse, child, grandparent, parent, or sibling of an owner.

[45 IAC 2.2-3-5\(a\)](#) states:

For purposes of the state gross retail tax and use tax, transactions representing isolated or occasional sales of vehicles required to be licensed by the state for highway use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in this act of a vehicle required to be licensed by the state for highway use in Indiana shall be deemed a retail transaction and the use of such vehicle shall be subject to the use tax which shall be paid by the purchaser to the Bureau of Motor Vehicles at the time of the licensing of the vehicle by the purchaser. (Emphasis added).

In the case at hand, Company M transferred ownership to Taxpayer. The transaction is deemed a retail transaction, per [45 IAC 2.2-3-5\(a\)](#). Taxpayer does not qualify for an exemption under IC § 6-2.5-5-15.5. Thus Taxpayer owes use tax on the vehicle, as calculated per IC § 6-2.5-3-6(e). Finally, the Department notes that penalty and interest were also assessed, but Taxpayer did not protest those issues. Thus they are not addressed in this finding.

#### **FINDING**

Taxpayer's protest is denied.

*Posted: 02/26/2014 by Legislative Services Agency*

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