

Letter of Findings Number: 04-20140200
Sales Tax
For Tax Years 2010-12

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Sales Tax—Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-5-39; Sales Tax Information Bulletin 28S (April 2012).

STATEMENT OF FACTS

Taxpayer is an Indiana RV dealer. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for tax years 2010, 2011, and 2012. The audit resulted in the assessment of sales tax on certain RV sales. Taxpayer protested the imposition of sales tax on certain transactions. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

I. Sales Tax—Imposition.

DISCUSSION

Taxpayer protests sales tax imposed for tax years 2010, 2011, and 2012. The Department reviewed Taxpayer's RV sales and imposed tax on transactions where sales tax had not been collected at the time of sale. The Department sent letters to the customers who were listed as having taken delivery of the RVs outside Indiana, asking for verification of the location of the delivery address. Of those customers who responded, some stated that they took delivery of their RV at Taxpayer's Indiana location, while some responded that they took delivery of their RV at the out-of-state location listed on Taxpayer's documentation. The Department determined that the response rate was too small to arrive at an accurate result. The Department therefore imposed sales tax on sales of RVs to those customers who lived in nine particular states as well as Canada and Mexico. Sales to individuals who lived in those states and nations were chosen for sales tax adjustments due to the lack of reciprocal agreements between Indiana and those jurisdictions.

Taxpayer argues that these transactions should be exempt because it has documentation supporting its position that delivery of the RVs took place outside Indiana. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Of relevance is IC § 6-2.5-5-39(c), which states:

- A transaction involving a cargo trailer or a recreational vehicle is exempt from the state gross retail tax if:
- (1) the purchaser is a nonresident;
 - (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
 - (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;

- (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; and
- (5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.

A transaction involving a cargo trailer or recreational vehicle that does not meet the requirements of subdivision (5) is not exempt from the state gross retail tax.
(Emphasis added).

Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259 NRA, clarifies this exemption and lists the states that do not provide an exemption from sales, use, or similar taxes imposed on recreational vehicles:

...
A full exemption is applicable to the purchase of a recreational vehicle (RV) or a cargo trailer by a NONRESIDENT if the purchaser affirms that the purchase will be registered/titled within 60 days in a reciprocal state or country. A reciprocal state is one that allows an exemption to an Indiana resident who purchases an RV or a cargo trailer to be registered/titled in Indiana.

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|----------------------|----------------------------|
| Arizona | Mississippi |
| California | North Carolina |
| Florida | South Carolina |
| Hawaii | Canada |
| Massachusetts | Mexico |
| Michigan | All Other Countries |

...
(Bold in original).

Therefore, Indiana sales tax must be collected on RVs sold in Indiana when the RV is to be registered in Indiana or one of the above listed states or nations.

Additionally, Indiana sales tax will not be collected on an RV delivered outside of Indiana, regardless of where it is to be registered, as further clarified by Sales Tax Information Bulletin 28S, which states:

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 the 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.
(Emphasis added). (Bold in original).

Taxpayer states that the Department's website lists the following information required to show out-of-state delivery: method of delivery, specific delivery location, date of delivery, signature of the purchaser (confirming the vehicle was inspected and accepted outside Indiana), delivery price (if applicable). A review of the Department's website shows that, while the website does list these requirements, it also states that the requirements must be provided on purchase orders as well as shipping documentation. This is same standard as listed in Sales Tax Information Bulletin 28S.

Therefore, as provided by Sales Tax Information Bulletin 28S, to be exempt from collecting Indiana sales tax, an Indiana RV dealer must provide a sales invoice or purchase order which lists the delivery terms in order to prove that the vehicle was sold outside of Indiana.

Taxpayer argues that it provided sufficient documentation when it supplied forms, signed by purchasers, stating that the delivery occurred outside Indiana. After review, the Department notes that this is delivery documentation which is not sufficient by itself according to Sales Tax Information Bulletin 28S. Sales invoices or purchase orders are required to establish out-of-state delivery. Since Taxpayer only provided delivery documentation and not the required sales invoices or purchase orders, which do not meet the standard explained in Sales Tax Information Bulletin 28S, the Department used the home address of the customers and made proposed assessments for sales tax. Those adjustments were to assess sales tax on Taxpayer as a retail merchant for sales to customers who lived in the nine non-reciprocal states plus Canada and Mexico, as listed in Sales Tax Information Bulletin 28S. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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