

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2014-09ST
April 7, 2015

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ISSUE

Sales Tax - Collection of Sales Tax on the Sale of Trailers

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-2-3](#); [IC 6-2.5-6-1](#); [IC 6-6-5-1](#); [45 IAC 2.2-3-5](#); Sales Tax Information Bulletin #28S; Sales Tax Information Bulletin #84.

A company ("Taxpayer") is seeking an opinion as to the applicability of sales tax to its sales of custom, specialty trailers and the departmental procedures in order to remit that tax. Specifically, Taxpayer seeks a ruling regarding the following:

1. Is it correct that, despite not having an SIC code that is naturally subject to the new law regarding the use of ST-103-CAR, [Taxpayer] must file that new form, due to the fact that a Trailer is considered a "Motor Vehicle" and, on occasion, they must collect sales tax?
2. [Taxpayer]'s sales volume, that triggers Sales Tax collection, is so low that they were assigned an "annual" filing Frequency Status effective 1/1/2012. Is it correct that [Taxpayer]'s Filing Frequency status will NOT change as a result of being subject to the new law of having to file the ST-103-CAR, and that, until their [onsite] "out of state" + Indiana sales volume warrants a change, their Filing Frequency Status will remain annual?
3. Finally, is it correct that, when [Taxpayer] sells a trailer in an "Out of State" sale where the customer picks up the Trailer at [Taxpayer]'s location (i.e. Free on Board FOB "Shipping Dock" or "Origin"), they are only required to collect the State Level Sales Tax of the customer's destination State, NOT any lower level Sales Taxes, to include but not limited to County, or City level Sales Taxes?

STATEMENT OF FACTS

Taxpayer, in its own words, is "a manufacturer of [c]ustom, [s]pecialty [t]railers." Taxpayer's trailers are not cargo trailers. They are trailers used as mobile worksites for the tech field. They are either standalone trailers, trailers inserted into the beds of pickup trucks, or trailers "spliced" into the existing vehicle. Taxpayer occasionally "will, from their manufacturing facility, transact a sale where sales tax collection is required."

DISCUSSION

Taxpayer requests that the department rule whether recent changes in the sales tax laws would affect Taxpayer's filing and collection requirements.

In general, [IC 6-2.5-2-1\(a\)](#) imposes sales tax on retail transactions made in Indiana. Additionally, [45 IAC 2.2-3-5\(b\)](#) provides that the sale of any motor vehicle is subject to Indiana sales and use tax unless such transaction is entitled to a statutory exemption. A motor vehicle or trailer purchased from a registered Indiana dealer is subject to Indiana sales tax. The dealer is required to collect the sales tax and provide a completed Form ST-108 to the customer showing that the tax has been paid. [45 IAC 2.2-3-5\(c\)](#).

Further, these provisions have included sales where the purchaser intends to immediately register, license, and/or title the motor vehicle or trailer for use in another state; however, the Indiana General Assembly enacted legislation in 2014 that affected the sales of vehicles to individuals or entities that intend to title and register the vehicle for use in another state or country. As of July 1, 2014, the sales tax rate imposed on such sales is the state-level sales tax rate of the state in which the vehicle will be titled and/or registered. [IC 6-2.5-2-3](#) now provides in pertinent part the following:

- (a) As used in this section, "motor vehicle" means a vehicle that would be subject to the annual license excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana.
- (b) Notwithstanding section 2 of this chapter, the state gross retail tax rate on a motor vehicle that a purchaser intends to:
- (1) transport to a destination outside Indiana within thirty (30) days after delivery; and
 - (2) title or register for use in another state or country;
- is the rate of that state or country (excluding any locally imposed tax rates) as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (c).

Trailers, however, are not subject to the motor vehicle excise tax, as [IC 6-6-5-1\(i\)](#) states in pertinent part:

This chapter does not apply to the following:

- ...
- (4) Vehicles subject to registration as trucks under the motor vehicle registration laws of the state, except trucks having a declared gross weight not exceeding eleven thousand (11,000) pounds, **trailers**, semitrailers, tractors, and buses. (**Emphasis added**).

Taxpayer's first question is whether it needs to file an ST-103CAR because a trailer would be considered a "motor vehicle" and Taxpayer does collect sales tax on occasion. Taxpayer would not need to file the ST-103CAR or the ST-108NR because its trailers are not "motor vehicles" under [IC 6-2.5-2-3](#). The ST-103CAR was developed specifically for motor vehicle dealers, which Taxpayer is not.¹ The ST-108NR is required to be filed when a motor vehicle dealer sells a motor vehicle to a nonresident who will register and title the vehicle within thirty days in their home state. Sales Tax Information Bulletin ("STIB") #84 provides clarification that a "trailer" does not meet the definition of a "motor vehicle." Therefore, trailers are not included in the ST-108NR filing requirements either.

With regard to Taxpayer's second question about whether its filing frequency will change as a result of having to file the ST-103CAR, the department already established above that Taxpayer would not be required to file the ST-103CAR. Whether Taxpayer is selling to an Indiana resident or a nonresident does not affect its filing frequency. The only change that will affect Taxpayer's filing frequency status is if its annual sales tax liability exceeds one thousand dollars (\$1,000). [IC 6-2.5-6-1](#) provides guidance in pertinent part as follows:

- (a) **Except as otherwise provided in this section, each person liable for collecting the state gross retail or use tax shall file a return for each calendar month and pay the state gross retail and use taxes that the person collects during that month.** A person shall file the person's return for a particular month with the department and make the person's tax payment for that month to the department not more than thirty (30) days after the end of that month, if that person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year did not exceed one thousand dollars (\$1,000). If a person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year exceeded one thousand dollars (\$1,000), that person shall file the person's return for a particular month and make the person's tax payment for that month to the department not more than twenty (20) days after the end of that month.

- ...
- (c) **Instead of the reporting periods required under subsection (a), the department may permit a retail merchant to report and pay the merchant's state gross retail and use taxes for a period covering a calendar year, if the retail merchant's state gross retail and use tax liability in the previous calendar year does not exceed one thousand dollars (\$1,000). A retail merchant using a reporting period allowed under this subsection must file the merchant's return and pay the merchant's tax for a reporting period not later than the last day of the month immediately following the close of that reporting period. (Emphasis added).**

The Department's website provides further clarification as follows:

The filing frequency is based on the average monthly liability throughout the tax year. Remember your filing status can be changed if there is an increase or decrease in the amount of tax you owe throughout the year. You will be notified of any changes to your filing status before the beginning of the next tax year. Also if your average monthly tax exceeds \$5,000, you are required to make payments by Electronic Funds Transfer. Call (317) 233-4015 if you have questions on your filing status.²

Taxpayer's next question is whether it is required to collect the sales tax of the customer's destination state if it sells a trailer to a nonresident and the customer picks up the trailer at Taxpayer's location. Again, this is not a sale

where [IC 6-2.5-2-3\(b\)](#) or the ST108NR would apply, because trailers do not fall under the definition of "motor vehicles." Indiana Sales Tax would be collected at 7% if applicable. The applicability of Indiana Sales Tax is enumerated in STIB 28S as follows:

General Application of Sales Tax

Absent a statutory exemption, all sales of motor vehicles and trailers purchased in Indiana are subject to Indiana sales and use tax. **This includes sales where the purchaser intends to immediately register, license, and/or title the motor vehicle or trailer for use in another state.**

Recreational Vehicles and Trailers Only

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.

Dealers must collect the Indiana sales tax on sales to a **nonresident** of Indiana if registering or titling in one of the following nonreciprocal states/countries:

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

Trailer Sale Note: In addition to the above list of nonreciprocal states, an Indiana dealer must collect the Indiana sales tax on the sale of cargo trailers to residents of Kentucky, Maine, and Rhode Island because these states are not reciprocal with Indiana as it relates to trailer sales.

RULING

Taxpayer is not required to file a ST-103CAR. Taxpayer's filing frequency is dependent on its annual sales tax liability. Taxpayer is further not required to collect sales tax at the rate of its customer's base state as enumerated in [IC 6-2.5-2-3](#), or to fill out a ST-108NR.

One final note regarding Taxpayer's conversion of a motor vehicle when it splices a trailer into an existing motor vehicle: if Taxpayer actually purchases a motor vehicle, adds a trailer to the motor vehicle, and then sells the converted motor vehicle, Taxpayer is selling a motor vehicle and the ruling above would not apply. If, however, Taxpayer is converting a motor vehicle owned by another person, the ruling above would apply.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

¹ Taxpayer has a "Converter Manufacturer" license with the Indiana Secretary of State's Office.

² <http://www.in.gov/dor/4006.htm>