

Final Order Denying Refund Number: 04-20170102R
Sales Tax
For The 2016 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Individual was not entitled to additional refund of the Indiana sales tax paid on a recreational vehicle purchase because Individual purchased and took possession of the recreational vehicle at the dealership's business location in Indiana and titled it in a state that does not have a reciprocal sales tax exemption statute.

ISSUE

I. Sales Tax - Refund - Non-Resident Recreational Vehicle Purchase.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-4-1; IC § 6-2.5-5-24; IC § 6-2.5-5-39; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-2.5-13-1; IC § 6-8.1-9-1; Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#); Sales Tax Information Bulletin 28S (April 2012); Sales Tax Information Bulletin 72 (July 2008).

Taxpayer protests the partial refund denial of sales tax which was collected at the time of the sale of a recreational vehicle.

STATEMENT OF FACTS

Taxpayer is an individual residing in Mississippi. In October 2016, Taxpayer purchased a recreational vehicle ("RV") from a dealership located in Indiana ("Dealership"). The Dealership collected sales tax in the amount of \$2,765.00. The sales tax was calculated based on 7 percent of the sale price of the RV. Taxpayer took possession of the RV at the Dealership's business location in Indiana and drove it back to his home in Mississippi.

Taxpayer proceeded to title and register the RV in Mississippi, but was required to pay Mississippi use tax in the amount of \$1,983.20 to the Mississippi Division of Motor Vehicles ("MS DMV") for titling the RV in that state. After paying the \$1,983.20—in addition to other taxes and fees—to MS DMV, Taxpayer filed a claim for refund with the Indiana Department of Revenue ("Department") requesting a refund of the full amount of Indiana sales tax that was collected by the Dealership at the time of purchase. Upon review, the Department refunded Taxpayer in the amount of \$790.00, but denied the remainder.

Taxpayer protested the partial refund denial. An administrative phone hearing was held. This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales Tax - Refund - Non-Resident Recreational Vehicle Purchase.

DISCUSSION

Upon initial review of Taxpayer's refund claim, the Department determined that Taxpayer was entitled to a partial refund of \$790.00. Taxpayer, to the contrary, argued that he is entitled to the full refund because he was a non-resident purchaser who should not have been required to pay tax twice on the same RV purchase, and that the Department erroneously denied his refund claim.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which, in relevant part, provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax . . . is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana]" IC § 6-2.5-13-1(d)(1). In general, the purchaser "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." IC § 6-2.5-2-1(b).

When a purchaser claims the purchase "is exempt from the state gross retail and use taxes, [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). "A seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail or use tax on that purchase." *Id.* Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

Additionally, a statute which provides a tax exemption is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 100 (internal citations omitted). In applying any tax exemption, "[t]he 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).

Taxpayer argues that the purchase of the RV from the Indiana Dealership should be exempt from tax because it involves interstate commerce. IC § 6-2.5-5-24(b) provides:

Transactions are exempt from the state gross retail tax to the extent that the gross retail income from those transactions is derived from gross receipts that are . . . (2) derived from business conducted in commerce between the state and either another state or a foreign country, to the extent the state is prohibited from taxing that gross income by the Constitution of the United States.

See also [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#). However, this exemption does not apply when a retail purchaser takes delivery of the property in Indiana. The Department's Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA, addressing issues concerning sales of motor vehicles and trailers, further explains the interstate commerce exception as follows:

IV. INTERSTATE COMMERCE EXEMPTION

A vehicle . . . sold in **interstate commerce** is not subject to the Indiana sales tax. To qualify as being "sold in interstate commerce," the vehicle . . . **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. **The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle . . . in Indiana**, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle . . . outside Indiana. If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. **Possession taken within the state does not qualify as an interstate sale. (Emphasis in original) (Emphasis added).**

During the hearing, Taxpayer stated that he took possession of the RV at the Dealership's location in Indiana.

Additionally, Taxpayer's supporting documentation also demonstrated that the transaction took place at the Dealership's business location in Indiana. The bill of sale does not list any delivery terms to indicate that the RV was delivered outside of Indiana by the dealer. The RV was not sold in interstate commerce because the dealer did not deliver the vehicle outside Indiana, and the transaction began and concluded in Indiana. Thus, the sale of the RV was an Indiana sale subject to Indiana sales tax. See IC § 6-2.5-13-1(d)(1) ("When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.").

Taxpayer also argues that he should not have paid Indiana sales tax because he is a non-resident who is exempt from the payment of sales tax on RVs. IC § 6-2.5-5-39 provides, in relevant part:

(c) 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).

A non-resident purchaser must claim this exemption by submitting an Affidavit of Exemption by a Nonresident of Indiana on the Purchase of a Recreational Vehicle or Cargo Trailer ("ST-137RV Affidavit") stating the purchaser's intent to transport the RV to a destination outside of Indiana within 30 days, and title or register the RV for use in another state. IC § 6-2.5-5-39(d). During the protest, Taxpayer provided a copy of the ST-137RV Affidavit, completed at the time of purchase, indicating that he would be titling the RV in Mississippi.

However, the sales tax exemption for non-resident purchasers of RVs does not apply to residents of every state. Sales Tax Information Bulletin 72 (July 2008), 2008 Ind. Reg. 045080663NRA, provides additional guidance on the sales tax exemption applicable to RVs purchased by non-residents:

III. EXEMPTION FROM THE SALES TAX

Effective July 1, 2006, sales of recreational vehicles and cargo trailers by Indiana dealers destined for out-of-state registration will be exempt from the Indiana sales tax **if the state where the recreational vehicle or cargo trailer is going to be registered provides a similar exemption for an Indiana resident making a purchase in that state.** This exemption also applies to states that do not impose a sales tax. Forty-one states . . . plus the District of Columbia provide a drive-out exemption, provide reciprocity, or have no sales tax.

. . .

IV. STATES WITH NO EXEMPTION

There are nine states plus Canada, Mexico, and all other foreign countries that do not provide an exemption for vehicles to be registered in Indiana. **Because of this, purchases 1) made from Indiana dealers and 2) to be registered in one of the following will be required to pay Indiana sales tax at the time of purchase.**

Arizona
Hawaii
Mississippi

California
Massachusetts
North Carolina

Florida
Michigan
South Carolina

(Emphasis added).

Mississippi is one of the nine states that does not have a reciprocal statute that provides for a sales tax exemption for RVs purchased in that state and registered in Indiana, thus not satisfying the requirement of IC § 6-2.5-5-39(c)(5). This exclusion from the exemption is also stated on the face of the ST-137RV Affidavit, which instructs dealers to collect Indiana sales tax if the purchaser is a resident of, among other states, Mississippi. Because Taxpayer is a resident of Mississippi and titled the vehicle in Mississippi, his purchase did not meet all of the requirements of the sales tax exemption for non-resident RV purchasers.

Finally, Taxpayer complained that he should not have to pay sales tax twice on the same RV purchase. However, Taxpayer's complaint is with respect to Mississippi's failure to allow credit for tax paid on an out-of-state purchase of an RV. Thus, Taxpayer's recourse and remedies must rest with Mississippi and Indiana has no authority to address that matter.

In conclusion, Taxpayer's RV purchase was an Indiana retail transaction subject to Indiana sales tax. Taxpayer previously demonstrated that his purchase satisfied the requirements of IC § 6-2.5-2-3(b) such that the applicable sales tax rate for the RV purchase was Mississippi's sales tax rate of 5 percent, not Indiana's 7 percent sales tax rate. Taxpayer satisfied the requirement of filing form ST-108NR to indicate that the RV would be transported to and titled in Mississippi within 30 days of the purchase. The Department therefore properly refunded the difference of \$790.00 to Taxpayer, but Taxpayer is not entitled to the Indiana sales tax exemption for non-resident RV purchasers. Therefore, the Department was correct in denying the refund of the remaining \$1,975.00.

FINDING

Taxpayer's protest is denied.

Posted: 06/28/2017 by Legislative Services Agency
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