

**Memorandum of Decision Number: 04-20170320R  
Sales and Use 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 document.

**HOLDING**

When an out-of-state sales tax was paid at point of sale outside Indiana, a tax credit was given for computing Indiana use tax at the Indiana Bureau of Motor Vehicle (BMV). Service Provider demonstrated that it overpaid the use tax to title and register the vehicle when it completed the paperwork at the BMV and therefore was entitled to the refund.

**ISSUE**

**I. Sales and Use Tax - Credit for Tax Paid Out-of-State.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-5; IC § 6-2.5-3-6; IC § 6-2.5-4-1; [IC 6-2.5-5](#); IC § 6-2.5-13-1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-8.1-9-1; *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466 (Ind. Tax. Ct. 1993); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-14](#); [45 IAC 2.2-3-16](#).

Taxpayer protests the refund denial of sales tax which it overpaid to the BMV at the time it registered and titled the vehicle on behalf of its client who collected the sales tax from the purchaser.

**STATEMENT OF FACTS**

Taxpayer, an out-of-state company, provides services of registering and titling motor vehicles throughout the United States.

In 2016, an Indiana resident purchased a vehicle from a Michigan car dealership. The customer did not trade in his used vehicle and the car dealer collected sales tax, at six (6) percent (Michigan sales tax rate) of the sales price, from the customer. The car dealer then employed Taxpayer's services to obtain the required vehicle title and license on behalf of the customer. Taxpayer subsequently registered and obtained vehicle title and license at the Indiana BMV because the vehicle in question was to be used in Indiana. After Taxpayer completed its work at the BMV and distributed the documents to proper parties, it was paid for its services after it invoiced the car dealer.

Taxpayer subsequently filed a refund claim, GA-110L form, claiming a refund of \$1,531.98 (Claim Number 1230306). The Indiana Department of Revenue ("Department") reviewed and denied the claim. Taxpayer protested the refund denial. An administrative phone hearing was held. This Decision results. Further facts will be provided as necessary.

**I. Sales and Use Tax - Credit for Tax Paid Out-of-State.**

**DISCUSSION**

Taxpayer filed a GA-110L form, claiming that it was entitled to a refund of \$1,531.98 because the BMV erroneously charged seven (7) percent Indiana use tax on the vehicle in question. Taxpayer asserted that the Indiana use tax should have been one (1) percent of the sale price because Michigan sales tax was collected on the same vehicle at the point of sale. Upon review, the Department denied the refund claim. In the December 1, 2016 letter, the Department explained, in part, as follows:

**IC [§] 6-8.1-9-1 provides in part: If a person has paid more tax than due, he may file a claim for refund.**  
In this particular situation, the individual that created the taxable event (the purchase of the vehicle), is not

the person applying for the refund. (**Emphasis in original**).

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund if the taxpayer determines that the taxpayer has paid more tax than the amount is legally due for a particular taxable period. To obtain the refund, the taxpayer is required to file the claim with the Department within three (3) years from the date of payment if that date is later than the due date of the return. "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." *Id.* In this instance, Taxpayer timely filed the refund claim concerning the use tax it paid on behalf of a Michigan dealership in 2016. Therefore, the issue is whether Taxpayer, the service provider, is entitled to a refund for the tax it paid at the BMW.

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). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called "the use tax" 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). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

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" in Indiana. IC § 6-2.5-13-1(d)(1). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for the state." *Id.* When a purchaser claims the purchase "is exempt from the state gross retail [] tax[], the purchaser may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). The "seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail [] 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.

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Rhoads*, 774 N.E.2d at 1048; *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 468 - 69 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. *Rhoads*, 774 N.E.2d at 1050. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. IC § 6-2.5-3-2(a); *USAir, Inc.*, 623 N.E.2d at 468 - 69. A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b) and (c); IC § 6-2.5-3-2(a).

As a general rule, all purchases of tangible personal property are taxable unless specifically exempted by the Indiana law. An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). There are various tax exemptions available under [IC 6-2.5-5](#); these enumerated exemptions also apply to transactions which are subject to Indiana use tax. [45 IAC 2.2-3-14](#). A statute which provides a tax exemption, however, 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 101 (internal citations omitted). Additionally, "[I]liability for Indiana use tax shall be reduced by a credit for the amount of any sale, purchase, or use tax paid to any other state . . . with respect to the tangible personal property on which Indiana use tax applies." [45 IAC 2.2-3-16](#). See also IC § 6-2.5-3-5.

In cases where transactions involve purchase and sale of vehicles, IC § 6-2.5-3-6(d)(1) states "a person liable for the use tax imposed in respect to a vehicle . . . under [IC § 6-2.5-3-2(b)] shall pay the tax . . . to the titling agency when the person applies for a title for the vehicle . . . **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 . . . or proof that the taxes are inapplicable because of an exemption under this article.**" (**Emphasis added**).

IC § 6-2.5-3-6(e) further illustrates:

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.

In this instance, Taxpayer was required to obtain the title and vehicle registration at the BMV, the title agency. During the hearing, Taxpayer explained that the purchaser did not trade in his vehicle at the Michigan dealership and thus the total amount of the sales price was subject to tax. Taxpayer further explained that the transaction was completed in Michigan and the Michigan dealer collected and remitted the Michigan sales tax at six (6) percent of the gross receipts (namely, sales price) to Michigan. Thus, Taxpayer maintained that when it registered the vehicle in question at the BMV, the BMV failed to credit the sales tax paid to Michigan. In other words, Taxpayer asserted that the BMV erred in charging the seven (7) percent Indiana use tax; it should only be charged one (1) percent—the difference between Michigan sales tax rate and Indiana use tax rate—of the sales price for the vehicle in question. To support its protest, Taxpayer provided additional supporting documents, including the BMV Receipts for title and registration, a Receipt for RD-108 Dealer Transaction (showing the amount was remitted to Michigan), and the sales invoice of the vehicle in question.

Upon review, the Department is prepared to agree that Taxpayer's documentation demonstrated that a Michigan sales tax was collected and remitted to Michigan. Thus, a tax credit should have been granted at the BMV, which would have reduced the Indiana use tax due pursuant to [45 IAC 2.2-3-16](#). Taxpayer's documentation also demonstrated that it was Taxpayer who paid the BMV to complete the paperwork, not the customer, when Taxpayer titled the vehicle in question. Taxpayer did invoice the Michigan dealer for the services it rendered but it did not receive any payment from either the Michigan dealer or the customer for the additional tax charged at the BMV. In other words, Taxpayer was the person who overpaid the Indiana use tax at the BMV because the BMV failed to account for the Michigan sales tax was paid previously on the vehicle in question. Thus, Taxpayer is entitled to the refund stemming from the overpayment.

### FINDING

Taxpayer's protest is sustained.

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