

DEPARTMENT OF STATE REVENUE

04-20170188R.ODR

04-20170189R.ODR

Final Order Denying Refund Number: 04-20170188R; 04-120170189R
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

When Indiana sales tax was collected at the time of the sale, refund of sales tax to Retail Merchant was not permitted unless Retail Merchant first refunded the sales tax to its customers, the persons from whom the tax was collected.

ISSUE**I. Sales Tax - Refund Claimed by Retail Merchant.**

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 § 6-2.5-4-1; IC § 6-2.5-6-13; IC § 6-2.5-6-14.1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-8.1-9-1; IC § 6-2.5-13-1; *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 15-9-2](#).

Taxpayer protests the refund denial of sales tax which it paid to the Indiana Bureau of Motor Vehicle at the time it registered and titled the vehicle on behalf of its clients, out-of-state car dealership, which collected the sales tax from the purchasers.

STATEMENT OF FACTS

Taxpayer, an out-of-state company, provides services of registering and titling motor vehicles throughout the United States. In 2016, two (2) Indiana residents purchased vehicles from two out-of-state car dealerships. Each dealership collected the Indiana sales tax at the time of the sales. Each dealership subsequently engaged Taxpayer for its services of titling and registering. On behalf of its clients (these out-of-state car dealers), Taxpayer titled and registered two (2) vehicles at the Indiana Bureau of Motor Vehicle ("BMV") to be used in Indiana.

In late August and early September 2016, Taxpayer filed two separate refund claims, GA 110-L forms (Claim Numbers 1226269 and 1226272), stating that it was entitled to refunds of the sales tax paid on the vehicles. Taxpayer claimed that the BMV did not consider the "trade-in allowance" on both transactions, which would have reduced the amount of Indiana tax due.

Upon review, the Indiana Department of Revenue ("Department") denied both claims. Taxpayer protested the refund denials. An administrative phone hearing was held. This Decision results. Further facts will be provided as necessary.

I. Sales Tax - Refund Claimed by Retail Merchant.**DISCUSSION**

The Department reviewed and denied both Taxpayer's refund claims. The Department explains in relevant part:

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).**

Taxpayer, to the contrary, argued that it overpaid sales tax on both vehicles at the BMV when it titled and

registered both vehicles on behalf of its clients (the out-of-state dealerships) because the BMV failed to take into account the "trade-in allowance" which would have reduced the total amount of the tax.

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 tax it paid on behalf of two out-of-state dealerships in 2016. Therefore, the issue is whether Taxpayer, the service provider, was entitled to refunds of sales tax, which the out-of-state dealerships collected from their customers upon sales of the cars and forwarded to Taxpayer to be paid at the BMV.

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).

Because the retail merchant - the agent for the state - is required to collect and remit the sales tax, a trust tax, on the retail transaction from the purchaser, the retail merchant is often tasked with customer's requests of refund when the retail merchant erroneously collects the tax. Under those circumstances, IC § 6-2.5-6-14.1 specifically explains that the **"retail merchant is not entitled to a refund of state gross retail [tax] . . . unless the retail merchant refunds those taxes to the person from whom they were collected."** (Emphasis added). In other words, when the retail merchant indeed refunds the sales tax, which it previously collected, to its customer, the retail merchant may be entitled to the refund of sales tax from the state.

Nonetheless, the purchaser who is liable for paying the tax at the time of the transaction always has the statutory right to file a refund claim with the Department pursuant to IC § 6-8.1-9-1 and [45 IAC 15-9-2](#). IC § 6-2.5-6-13

further instructs the purchaser to do so, which provides:

A person is entitled to a refund from the department if:

- (1) a retail merchant erroneously or illegally collects state gross retail or use taxes under this article from the person;
- (2) the retail merchant remits the taxes to the department;
- (3) the retail merchant does not refund the taxes to the person; and
- (4) the person properly applies for the refund under the refund provisions contained in [IC 6-8.1-9](#).

In this instance, Taxpayer's clients - namely, the out-of-state dealerships - were the retail merchants, which collected the sales tax upon the sales of the vehicles. Taxpayer's clients then hired Taxpayer and forwarded the amount of tax to Taxpayer. Thus, Taxpayer, stepping into its clients' shoes, became the agent for the state and remitted the tax on behalf of its clients. Upon titling and registering the vehicles on behalf of its clients, Taxpayer paid the tax at the BMV. Thus, to claim refunds of the sales tax it remitted, Taxpayer must demonstrate that the amount of the tax that it claimed was overpaid was refunded to the purchasers. In other words, Taxpayer must show that it refunded the overpayments to the dealerships and, in turn, the dealerships refunded the tax to their customers pursuant to the above mentioned Indiana law.

Upon review, the Department is not able to agree that Taxpayer's supporting documentation demonstrated that the overpayments were refunded to the purchasers. Thus, Taxpayer was not entitled to the refunds of sales tax - a trust tax - "unless the retail merchant refund[ed] those taxes to the person from whom they were collected." IC § 6-2.5-6-14.1. The refunds (Claim Numbers 1226269 and 1226272) claimed by Taxpayer thus were properly denied.

In short, Taxpayer was not entitled to the refunds of the sales tax - a trust tax - its clients collected unless the overpayments were first refunded to the purchasers. *In the absence of other verifiable supporting documents*, Taxpayer's supporting documentation was not sufficient to substantiate that Taxpayer and its clients refunded the sales tax - a trust tax - "to the person from whom they were collected."

FINDING

Taxpayer's protest is respectfully denied.

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