

**Final Order Denying Refund: 04-20170877R
Gross Retail Tax
For the Years 2013 through 2016**

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

The Department disagreed that Buy-Here-Pay-Here Car Dealer was entitled to claim a refund of sales tax paid by its retail customers on the purchase of extended warranties; Buy-Here-Pay-Here Car Dealer sold the warranty agreements to a related entity which, under Indiana law, became the assignee entitled to claim any subsequent refund.

ISSUE

I. Gross Retail Tax - Exempt Vehicle Warranty Contracts.

Authority: IC § 6-2.5-6-14.1; *Chrysler Financial Co. v. Indiana Dep't of State Revenue*, 761 N.E.2d 909 (Ind. Tax Ct. 2002).

Taxpayer argues that it is entitled to a refund of sales tax paid by its customers on their purchase of extended service car contracts.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of selling used cars to customers in Indiana and to customers in other states. Taxpayer operates business locations in Indiana and locations outside Indiana.

Taxpayer sells its cars on a "buy here pay here" basis because Taxpayer extends credit to purchasers of its cars. Along with the sale of the cars, Taxpayer also sells "vehicle protection plans" also known as "extended service contracts."

When Taxpayer sells the service contracts, it bills its customers separately from the sale of the car and collects sales tax on the price of the contracts.

These service contracts are then resold to a related third-party which administers the warranty plan and which provides the repair services covered by the service contracts. Taxpayer sold the contracts to this third-party "without recourse."

Taxpayer sought and received a Revenue Ruling (2015-21ST) from the Indiana Department of Revenue ("Department") addressing the question of whether Taxpayer's service contracts were exempt from Indiana's sales tax.

The Department issued its Revenue Ruling March 3, 2016. The Ruling found as follows:

Taxpayer's "optional extended service contract" is an "optional warranty contract," and therefore not subject to Indiana sales and use tax.

Taxpayer thereafter submitted to the Department a form GA-110L ("Claim for Refund") dated March 2016 requesting a refund of approximately \$1,000,000 representing the amount of sales tax Taxpayer collected from Indiana retail purchasers of service contracts.

The Department reviewed the claim and issued a response dated July 2017 denying the refund. In its denial letter, the Department stated:

The [T]axpayer is requesting a refund for sales tax that was included as part of a retail installment contract.

The [T]axpayer sold these retail installment contracts, in the regular course of business, to a related entity without recourse. In doing so, the [T]axpayer is not legally entitled to a refund of sales tax from those contracts pursuant to IC § 6-2.5-6-14.1. The refund claim is being denied in its entirety.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results.

I. Gross Retail Tax - Exempt Vehicle Warranty Contracts.

DISCUSSION

The issue is whether Taxpayer is entitled to a refund of sales tax it collected from Indiana retail customers on Taxpayer's sale of extended service contracts.

Taxpayer states that it is entitled to a refund of the sales tax because it is the retail merchant which sold the service contracts to its customers and because - although Taxpayer sold the service contracts to a related company - it continues to administer the customer financing arrangement by which its customers acquired the cars and purchased the service contracts.

As explained by Taxpayer:

The retail installment contract between [Taxpayer] and each customer authorized [Taxpayer] to receive refunds on its behalf and set off excess amounts of official fees and taxes refunded by governmental authorities against the principal balance due on the customer's account.

Moreover, Taxpayer states that the refund is not barred by IC § 6-2.5-6-14.1 which provides as follows:

Notwithstanding the refund provisions of this article as incorporated from the gross income tax law ([IC 6-2.1](#), repealed), a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.

Taxpayer states that it has "refund[ed] those taxes from the person[s] from who they were collected."

[Each] refund has already been provided by [Taxpayer] to the affected customers. [Taxpayer] provided a refund to the vast majority of affected customers by crediting the customer's account, thereby reducing the principal balance outstanding on the customer's account by the over collected sales tax as well as the interest attributable to the inclusion of such tax in the financed amount. These credits were provided by [Taxpayer] on April 26, 2016 and were not accompanied by any notice to the customers. Moreover, of the nearly 5,000 number of customer accounts at issue in the refund claim, there were 146 accounts that had been paid off by the time the credit was to be processed by [Taxpayer], which resulted in the issuance of refund checks to these customers. These refund checks were sent by [Taxpayer] to the customer on May 5, 2016 and May 6, 2016.

The Department has not verified Taxpayer's assertion that it has either credited the accounts of its customers or issued its customers a refund check because Taxpayer has not provided the source documentation necessary to sustain that conclusion. Nonetheless, the Department concludes that Taxpayer is not the entity entitled to claim the \$1,000,000 refund.

The Indiana Tax Court addressed an assignee's right to claim a sales tax bad debt deduction in *Chrysler Financial Co. v. Indiana Dep't of State Revenue*, 761 N.E.2d 909 (Ind. Tax Ct. 2002). In that case, the court considered bad debt deduction treatment when the retail merchant sold the installment contracts at cost to its related finance company without recourse. The Indiana Tax Court determined that upon the sale of the installment contracts, the finance company became the assignee and stepped into the shoes of the dealership allowing the finance company a bad debt deduction and ultimately the recipient of any sales tax refund resulting from the bad debt. *Id.* at 914.

Under the *Chrysler* standard, it is not Taxpayer who has the right to claim the refund, it is the assignee. Taxpayer may have been the retail merchant with whom the customers originally dealt, but Taxpayer "stepped out" of the shoes of any entity legitimately entitled to claim any refund of sales tax attendant to the original car and service contract sales transactions.

The Department is unable to agree that, under Indiana law, it is the entity entitled to receive any sales tax refund.

FINDING

Taxpayer's protest is respectfully denied.

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