

DEPARTMENT OF STATE REVENUE

04-20171004R.ODR

Final Order Denying Refund Number: 04-20171004R
Sales Tax
For The 2017 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 a refund of the Indiana sales tax on his vehicle purchase because Individual purchased a vehicle and took possession of the vehicle at the Indiana Dealership's business location in Indiana. The transaction was an Indiana sale subject to Indiana sales tax.

ISSUE

I. Sales Tax - Refund.

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 § 6-2.5-8-8; 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 84 (August 2014).

Taxpayer protests the refund denial of sales tax which was collected at the time of the sale.

STATEMENT OF FACTS

Taxpayer is an individual residing in West Virginia. In June 2017, Taxpayer came to Indiana to purchase a vehicle from a dealership in Indiana ("Dealership"). Dealership collected sales tax in the amount of \$895. The sales tax was calculated based on five percent of the sale price of that vehicle. Taxpayer took possession of the vehicle at the Dealership's business location in Indiana and drove back to his home in West Virginia.

Taxpayer proceeded to title and register the vehicle in West Virginia, but was required to pay a "privilege tax" at the West Virginia's Division of Motor Vehicles ("WV DMV") for titling that vehicle in that state. After paying the privilege tax to WV DMV, Taxpayer filed a claim for refund (Claim Number 1647115) requesting that the Indiana Department of Revenue ("Department") refund the full amount of sales tax (\$895) that was collected by the Dealership in June 2017. Upon review, the Department denied the refund claim.

Taxpayer protested the refund denial. Taxpayer asked that the Department make the decision based on the documentation he submitted without an administrative hearing. This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales Tax - Refund.

DISCUSSION

Upon initial review of Taxpayer's refund claim, the Department determined that Taxpayer was not entitled to the refund. The Department explained that:

Effective July 2014 dealers must collect the applicable tax rate on all sales per the state sales tax rate on vehicles. . . .

Taxpayer, to the contrary, argued that he is entitled to the full refund because he should not have paid tax twice on the same vehicle purchase and that the Department erroneously denied his refund.

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). 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.

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 101 (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). One particular exemption relevant to this present case is a retail transaction that qualifies as interstate commerce. IC § 6-2.5-5-24(b); See also [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#). The Department's Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA ("Information Bulletin 28S"), addressing issues concerning sales of motor vehicles, further explains, in relevant part, 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 or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer 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*).

Accordingly, a licensed Indiana car dealer generally must either collect sales tax or an exemption certificate at the time of the sale of the car. To qualify for the interstate commerce exemption, it is important to document the terms and the method of delivery on the sales invoice and maintain copies of delivery documents to substantiate that the vehicles are sold in interstate commerce. Otherwise, the dealer, as an agent for the state will be responsible for the Indiana sales tax. Similarly, when a purchaser makes the same claim, the purchaser must substantiate that the transaction qualifies as an interstate sale.

Taxpayer here asserted that he is entitled to a full refund from Indiana because he paid the tax a second time on the same vehicle purchase when he titled the vehicle at the WV DMV. Taxpayer further provided a Bill of Sale, a ST-108NR (Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle for a Nonresident), a payment receipt for the tax paid to WV BMV, and his email correspondence with the Dealership to support his protest.

Upon review, however, Taxpayer is mistaken. In his October 30, 2017, protest letter, Taxpayer stated that "I left my residence in West Virginia to purchase a [] car in [] Indiana." Taxpayer's supporting documentation also demonstrated that the transaction took place at the Dealership's business location in Indiana. That is, the transaction began and concluded in Indiana when Taxpayer took the possession of the vehicle he purchased in Indiana. In other words, the Dealership delivered the vehicle at its Indiana business location and Taxpayer accepted the vehicle in Indiana. Thus, the sale of the vehicle in question was an Indiana sale subject to Indiana sales tax. IC § 6-2.5-13-1(d)(1). The vehicle was not in interstate commerce, because the Dealership did not deliver the vehicle outside Indiana. Indiana is not precluded from imposing sales tax on an Indiana sale regardless of whether West Virginia allows a credit for sales tax paid on out-of-state retail transactions. Since Taxpayer was not entitled to any exemption pursuant to Indiana law, the Dealership, as an agent for the state, was required to collect the sales tax at the time of the vehicle sale because Taxpayer's purchase was not exempt from Indiana sales tax.

Nonetheless, in 2014, the Indiana General Assembly enacted legislation, 2014 Ind. Acts 1983, P.L. 166-2014, § 9 (codified at IC § 6-2.5-2-3), offering deferential treatment on certain qualified Indiana sales of motor vehicles. Specifically, IC § 6-2.5-2-3 allows purchasers who purchase vehicles in Indiana but intend to title and register the vehicles to be used in states other than Indiana (within 30 days after the sale) to pay the tax rate of the state for which the vehicles are ultimately titled, registered, and used. The Department's Sales Tax Information Bulletin 84 (August 2014), 20140827 Ind. Reg. 045140329NRA ("Information Bulletin 84") further explains the computation of the sales tax concerning the qualified Indiana sales. Pursuant to IC § 6-2.5-2-3 and Information Bulletin 84, the Dealership properly calculated and collected the sales tax at five percent.

Finally, referencing "Dormant Commence Clause" and various United States Supreme Court cases, Taxpayer complained that he should not have to pay tax twice on the same vehicle purchase. However, Taxpayer's complaint was with respect to West Virginia's failure to allow credit for tax paid on an out-of-state purchase under West Virginia law. Thus, Taxpayer's recourse and remedies must rest with West Virginia - Indiana has no authority to address that matter.

In short, Taxpayer was not entitled to additional refund because his vehicle purchase was an Indiana retail transaction subject to Indiana sales tax. Taxpayer demonstrated that his purchase qualified for the deferential treatment and should have paid five percent tax rate. The Dealership properly did just that.

FINDING

Taxpayer's protest is denied.

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