

Memorandum of Decision Number: 04-20180231
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 determination.

HOLDING

Individual was not entitled to a full refund of the Indiana sales tax paid on his vehicle purchase because Individual purchased a vehicle and took possession of the vehicle at the Indiana Dealership's business location in Indiana. Individual was entitled to a partial refund of the difference between the amount collected by the Indiana Dealership and West Virginia's vehicle sales tax rate.

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 (March 2017); 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 August 2017, Taxpayer purchased a vehicle from a dealership in Indiana ("Dealership"). Dealership collected sales tax in the amount of \$1,607.94. The sales tax was calculated based on six percent of the sale price of that vehicle (\$26,799). 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 tax in the amount of \$1,643.44 at the West Virginia's Division of Motor Vehicles ("WV DMV") for titling the vehicle in that state. After paying the \$1,643.44 to WV DMV, Taxpayer filed a claim for refund requesting that the Indiana Department of Revenue ("Department") refund the full amount of sales tax (\$1,607.94) that was collected by the Dealership in August 2017. The Department denied the refund claim in its entirety.

Taxpayer protested the refund denial. Taxpayer requested a final determination without a hearing. This Memorandum of Decision results based upon documentation provided with Taxpayer's protest. 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 a refund of sales tax paid on his vehicle. The Department explained in relevant part:

An Indiana dealer will only be required to collect sales tax at the destination state's rate up to Indiana's rate of 7 [percent]. Regardless of whether the destination state's or country's rate is greater than 7 [percent], the maximum sales tax rate to be imposed on the purchase of a vehicle from an Indiana dealer is 7 [percent].

Taxpayer, to the contrary, argued that he is entitled to a full refund because he should not have paid tax twice on the same vehicle purchase, and that the Department erroneously denied his refund. Taxpayer asserts that Indiana should have remitted the sales tax to the state of West Virginia.

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." IC § 6-2.5-2-1(b). "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 (March 2017), 20170426 Ind. Reg. 045170210NRA ("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 vehicle dealer generally must either collect sales tax or an exemption certificate at the time of the sale of the vehicle. 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 asserted that he is entitled to a full refund from Indiana because he paid tax a second time on the same vehicle purchase when he titled the vehicle at the WV DMV. Taxpayer provided a ST-108 (Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle), a payment receipt from the WV DMV showing the amount he paid for his West Virginia vehicle registration, and a cover letter from the Indiana Dealership to support his protest.

Upon review, however, Taxpayer's assumption that the Indiana sales tax, collected at the time of the vehicle purchase, should have been remitted to West Virginia is mistaken. Taxpayer's supporting documentation 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 dealer 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, Taxpayer should have only been charged five percent sales tax (\$1,339.95), which is West Virginia's special vehicle sales tax rate. Because the Dealership collected sales tax at a rate of six percent at the time of the vehicle purchase, Taxpayer is entitled to a refund in the amount of one percent of the vehicle sale price.

Finally, 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 VW Code § 11-15-3c(f). Thus, Taxpayer's recourse and remedies must rest with West Virginia and Indiana has no authority to address that matter.

In short, Taxpayer's 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. Taxpayer is entitled to a partial refund of sales tax in the amount of \$267.99.

FINDING

Taxpayer's protest is sustained in part and denied in part.

February 13, 2018

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