

**Supplemental Memorandum of Decision: 04-20180228R
Sales and Use Tax
For The Tax Year 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 Supplemental Memorandum of Decision.

HOLDING

Business was the entity which incurred a tax liability and was therefore the proper party to claim a refund. Therefore, refund of tax previously paid is warranted.

ISSUE

I. Sales and Use Tax—Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); [45 IAC 2.2-3-4](#).

Refund claimant protests the denial of a claimed refund of tax.

STATEMENT OF FACTS

Refund claimant ("Claimant") protests the denial of a claim for refund of tax for the tax year 2016. Claimant is a business which provides the service of registering vehicles purchased in one state and registered in another. In 2016, Claimant registered a vehicle in Indiana for one of its customers ("Customer") which had been purchased in another state. Subsequently, Claimant filed a claim for refund with the Indiana Department of Revenue ("Department") on the grounds that the sales tax paid at the time of purchase to the state in which the vehicle was purchased had not been fully credited when registering the vehicle in Indiana. Claimant states that, since it paid Customer's Indiana tax at the time it registered Customer's vehicle and since Customer's trade-in value on the vehicle purchase had not been fully credited in Indiana, it should receive credit for the value of the previously paid out-of-state sales tax which would reduce Indiana tax due and in turn would result in an overpayment of Indiana tax. The Department denied the claim for refund on the basis that Claimant was not the individual that created the taxable event and so was not the proper person to claim the refund. Claimant protested the denial and an administrative hearing was scheduled. Claimant did not call into or attend the scheduled administrative hearing and so the protest was deemed withdrawn. Claimant then requested a rehearing, which was granted. The rehearing was conducted via telephone and this Supplemental Memorandum of Decision results. Further facts will be supplied as required.

I. Sales and Use Tax—Refund.

DISCUSSION

Claimant protests the denial of its claim for refund of use tax for the tax year 2016. Claimant protests that it paid the Indiana sales tax on behalf of Customer and that the amount of Customer's out-of-state sales tax was not taken into account when calculating Indiana sales tax due when Claimant registered Customer's new vehicle in Indiana. The Department denied the claim for refund because it was Customer, not Claimant, who incurred sales tax when he purchased a vehicle. Since Claimant did not incur the tax, the Department determined, Claimant could not claim a refund of the tax.

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

IC § 6-8.1-9-1(a) states:

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. Except as provided in subsections (f) and (g), in 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, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance 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.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) *The person who acquires property in a retail transaction is liable for the tax on the transaction* and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (*Emphasis added*).

Use tax is imposed by IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed 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.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction.

Claimant explains that it provided the service of registering Customer's vehicle in Indiana, including payment of Indiana tax at the time of registration. Claimant believes that, since it paid the total amount of Indiana tax at the time of registration and since it determined that Customer's out-of-state sales tax was not properly credited against the purchase price of Customer's new vehicle, it should receive a refund of tax based on the overpayment to Indiana.

After review of the materials provided, the Department agrees with Claimant's protest. As provided by IC § 6-2.5-2-1(b), the person who acquires property in a retail transaction is liable for the tax on the transaction. However, in this case Claimant has established that Customer paid the total amount due to both states which Claimant remitted. Claimant has also established that it directly paid an additional six percent sales tax to Indiana which Customer never paid. Therefore, it was Claimant who overpaid Indiana sales tax and who is due a refund as provided by IC § 6-8.1-9-1(a).

FINDING

Claimant's protest is sustained.

March 29, 2018

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