

Final Order Denying Refund Number: 04-20181177R
Sales/Use 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

Because Individual purchased a vehicle from a Kentucky car dealership, which collected six (6) percent Kentucky - not Indiana - sales tax, the Indiana Department of Revenue was not able to refund the sales tax. Although the Kentucky dealer collected one (1) percent use tax on the sale of the vehicle, Individual failed to demonstrate that he purchased and used the vehicle exempt from the Indiana use tax; therefore, he was not entitled to a refund of the Indiana tax on his vehicle.

ISSUE

I. Sales and Use Tax - Refund - Out-of-state Purchase and Exemption.

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 § 6-2.5-13-1; IC § 6-8.1-9-1; *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); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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 2.2-3-4](#); [45 IAC 2.2-3-14](#); [45 IAC 2.2-5-3](#); [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-9](#); [45 IAC 2.2-5-10](#); [45 IAC 15-9-2](#); Commissioner's Directive 13 (June 2012).

Taxpayer protests the refund denial of tax which constituted six (6) percent of Kentucky sales tax and one (1) percent of Indiana use tax collected at the time of the sale in Kentucky, when he took possession of the vehicle in Kentucky.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who purchased a motor vehicle from a dealer in Kentucky. In October 2017, Taxpayer filed a Claim for Refund, Form GA-110L, claiming that he was entitled to a refund of \$1,749.30 tax (Claim Number 1662129) he paid to the Kentucky car dealer at the time of the purchase of the vehicle because his purchase and use of the vehicle qualified for the public transportation exemption.

The Indiana Department of Revenue ("Department") reviewed and denied the entire refund claim. Taxpayer protested the refund denial. A phone hearing was conducted. This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales and Use Tax - Refund - Out-of-state Purchase and Exemption.

DISCUSSION

Upon initial review of Taxpayer's refund claim, the Department requested that Taxpayer provide "additional supporting documentation . . . within twenty (20) days." Taxpayer did not respond to the Department's request. The Department thus denied Taxpayer's refund claim in full because Taxpayer failed to support his refund claim. The Department, in a January 29, 2018, letter, explained that:

The claim for refund did not include information necessary for the Department to verify the claim. We contacted you on December 5, 2017 advising that additional supporting documentation must be received by this office within twenty (20) days. We did not receive the additional documentation necessary to process the claim.

Taxpayer, to the contrary, stated that he is entitled to the full refund because his purchase and use of the vehicle qualified for the public transportation exemption.

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.

[45 IAC 15-9-2](#) further explains, in relevant part, that:

(b) The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to [IC 6-8.1-9-1](#).

. . .
(d) When filing a claim for refund with the department the taxpayer's claim shall set forth:

- (1) the amount of refund claimed;
- (2) **a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;**
- (3) **the tax period for which the overpayment is claimed; and**
- (4) **the year and date the overpayment was made.**

The claim for refund shall be filed on a form prescribed by the department.

(Emphasis added).

Thus, when a taxpayer determines he overpaid sales or use tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (June 2012), 20120530 Ind. Reg. 045120241NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana, which includes sales of motor vehicles. 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 person 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.*

The Indiana use tax is imposed "on the storage, use, or consumption of a vehicle . . . if the vehicle . . . (1) is acquired in a transaction that is an isolated or occasional sale; and (2) is required to be titled, licensed, or registered by this state for use in Indiana." IC § 6-2.5-3-2 (b). "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 generally functionally equivalent to the sales tax. *See Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

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. *Rhoades*, 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. *Rhoades*,

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).

Accordingly, all purchases of tangible personal property are taxable unless specifically exempted under Indiana law. [45 IAC 2.2-5-3\(b\)](#); [45 IAC 2.2-5-6\(a\)](#); [45 IAC 2.2-5-8\(a\)](#); [45 IAC 2.2-5-9\(a\)](#); [45 IAC 2.2-5-10\(a\)](#). 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](#). See also [45 IAC 2.2-3-14\(1\)](#). There are various tax exemptions available outlined in [IC 6-2.5-5](#) which are applicable to both sales tax and use tax. [45 IAC 2.2-3-14\(2\)](#). 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). In applying any tax exemption, the 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). When a taxpayer challenges the taxability, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Taxpayer in this instance asserted that he is entitled to a full refund, including a six percent Kentucky sales tax and one percent Indiana use tax on his purchase of the vehicle, because he purchased the vehicle, which "is being used 90[percent] of the time to deliver mail for the UNITED STATES POSTAL SERVICE. . . . My wife and I both are employed with USPS." To support his protest, Taxpayer provided copies of their employee identification cards, Indiana Certificate of Gross Retail or Use Tax Exemption for the Purchase of a Motor Vehicle or Watercraft (Form ST-108E), and financing agreement concerning the purchase.

Upon review, however, Taxpayer's reliance on the above-mentioned documentation is misplaced. Specifically, in this case, Taxpayer's supporting documentation showed that he purchased the vehicle from a Kentucky dealer and that he took possession of the vehicle in Kentucky. Thus, the sale in question occurred and concluded in Kentucky. In other words, the sale transaction was a Kentucky sale subject to Kentucky sales tax. The Kentucky car dealer properly collected the Kentucky sales tax at six (6) percent of the purchase price. Thus, the sales tax was remitted to Kentucky, not Indiana. Therefore, the Department is not able to refund the Kentucky sales tax.

Taxpayer's supporting documentation also demonstrated that the Indiana use tax at one (1) percent of the purchase price was collected at the time of the sale. Taxpayer claimed that he was entitled to the refund because he and his wife used the vehicle to deliver mail for the United States Postal Service ("USPS") and their use qualified for the public transportation exemption. The Department, however, is not able to agree. In particular, it was Taxpayer who purchased the vehicle from the Kentucky dealer, not the USPS. The Department does not dispute that the USPS may qualify for an exemption. However, the USPS did not make the purchase and use in this instance.

In short, given the totality of the circumstances, the Department is not able to refund Taxpayer the Kentucky sales tax because the tax was not remitted to Indiana. Also, in the absence of additional documentation to substantiate Taxpayer's assertion, the Department is not able to agree that Taxpayer's use of his vehicle qualify for the public transportation exemption.

FINDING

Taxpayer's protest is denied.

July 3, 2018

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