

Final Order Denying Refund: 04-20181341
Sales 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 Final Order Denying Refund.

HOLDING

Documentation supplied in the protest process indicates that a problematic vehicle was repurchased by the Dealership. Since the vehicle was repurchased rather than returned, the original transaction was not undone. Therefore, the claim for refund of sales tax previously paid was properly denied.

ISSUE

I. Sales Tax–Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-6-14.1; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 15-9-2](#); Sales Tax Information Bulletin 28S (March 2017) 20120530 *Ind. Reg.* 045120259NRA; Sales Tax Information Bulletin 28S (April 2012) 20120530 *Ind. Reg.* 045120259NRA.

Taxpayers protest the denial of a claimed refund of sales tax.

STATEMENT OF FACTS

Taxpayers are a married couple who live in Indiana. In September of 2016, Taxpayers purchased a used vehicle. After experiencing ongoing mechanical problems with the vehicle, the dealership ("Dealership") from whom Taxpayers purchased the vehicle took back the vehicle and paid off Taxpayers' automobile loan in the amount of the purchase price plus incurred repair fees, minus previously remitted loan payments and minus sales tax paid by Taxpayers at the time of the initial purchase. On April 31, 2017, Taxpayers filed a claim for refund of the sales tax they paid when they purchased the vehicle from Dealership. After review of the refund claim, the Department denied the claim.

Taxpayers protested the denial and filed a protest with the Department. The Department determined that Taxpayers had missed the deadline to file a protest of the refund denial and so declined to grant an administrative hearing on Taxpayers' protest. Taxpayers stated that they received the Department's letter regarding the initial denial and only learned of the Department's decision by calling in to find the status of their claim. Therefore, Taxpayers argued, they had not missed the deadline for filing a protest of the initial denial. After review of the circumstances, the Department decided to accept Taxpayers' protest and scheduled an administrative hearing. That administrative hearing was conducted via telephone and this Final Order Denying Refund results. Further facts will be supplied as required.

I. Sales Tax–Refund.

DISCUSSION

Taxpayers protest the Department's denial of a claim for refund of sales tax paid at the time Taxpayers purchased a used vehicle in 2016. The used vehicle had numerous mechanical issues. Eventually, the vehicle was returned to Dealership who paid off Taxpayers' automobile loan plus repair expenses but minus loan payments which Taxpayers already made and minus sales tax paid at the time of the initial purchase. The Department considered this to be a repurchase of the vehicle, thus constituting a second transaction rather than a reversal of the initial transaction. The Department denied Taxpayers' claim for refund on the basis that the repurchase of a vehicle by a dealer does not render the original transaction exempt for tax purposes. Taxpayers protest that the Dealership refunded the purchase price and therefore they are entitled to a refund of the sales tax they paid when they purchased the vehicle.

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.

First, the Department refers to 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).

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Next, the Department refers to § 6-8.1-9-1(a), which 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 (j) and (k), 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.

Also, the Department refers to [45 IAC 15-9-2\(d\)](#), which states:

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.

Next, the Department refers to IC § 6-2.5-6-14.1, which states:

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.

Finally, the Department refers to Sales Tax Information Bulletin 28S (March 2017) *20120530 Ind. Reg. 045120259NRA*, which states on page nine:

Transactions that result in customer-returned vehicle for which sales tax has been collected and remitted by the retail merchant may qualify for a refund of sales tax, in whole or in part, to the retail merchant if:

- The vehicle is returned within the number of days allowed for a return pursuant to the retail merchant's publicly stated return policy or specified in the written contract entered into between the purchaser and retail merchant, not to exceed 90 days;
- The vehicle is returned pursuant to explicit, written terms of the parties' contractual agreement or the retail merchant's publicly stated return policy; and
- The purchaser of the vehicle is refunded the entire purchase price including any sales tax (i.e., the amount actually collected by the retail merchant from the purchaser of the vehicle).

All three conditions must be met in order for the refund of sales tax, in whole or in part, to be granted. Vehicle returned by purchasers after the number of days allowed for a return as specified in the written contract or

the retail merchant's publicly stated return policy, or exceeding 90 days, do not qualify for a refund of sales tax.

(See also Sales Tax Information Bulletin 28S (April 2012) 20120530 Ind. Reg. 045120259NRA)

Therefore, in order for the retail merchant to be eligible for a refund of sales tax to the retail merchant, the three conditions listed above must be met.

In the course of the protest process, Taxpayers provided explanation and documentation in support of their position that the used vehicle was returned for a full refund to Dealership. However, as explained by the Sales Tax Information Bulletin 28S in order to qualify for the refund of sales tax, three conditions must met. First, Taxpayers purchased a used vehicle on September 6, 2016 and returned it on March 18, 2017. The vehicle had been used by the Taxpayers for over 6 months which did not meet the first condition that, in order to qualify as a refund, a return must not happen more than 90 days past the date of purchase.

The second condition listed in Sales Tax Information Bulletin 28S is that the vehicle is returned pursuant to explicit, written terms of the parties' contractual agreement or the retail merchant's publicly stated return policy. Taxpayers provided no documentation to the Department stating clearly that there are explicitly written contractual terms between Taxpayers and Dealership or a stated return policy by Dealership. The third condition listed in Sales Tax Information Bulletin 28S applies to retail merchants, as provided by IC § 6-2.5-6-14.1, and is not directly applicable to Taxpayers. Still, the fact that Dealership did not meet the third condition listed in Sales Tax Information Bulletin 28S does further establish that Dealership would not be eligible for a refund of that amount of sales tax. If Dealership had refunded the sales tax at issue to Taxpayers, Dealership would not have been able to then claim a refund from the Department because the first two conditions listed in Sales Tax Information Bulletin 28S were not met.

Therefore, since the vehicle was conveyed to Dealership more than ninety days after the initial transaction and since there was no written contract concerning returns and no publicly stated return policy by Dealership, the circumstances of Taxpayers' return of the vehicle to Dealership did not meet all three requirements listed in Sales Tax Information Bulletin 28S. Rather, the second conveyance of the vehicle constituted a repurchase of the vehicle in which Dealership was the purchaser and Taxpayers were the sellers. Since Taxpayers are individuals and not retail merchants, as provided by IC § 6-2.5-2-2 (b), Taxpayers were not responsible for collecting and remitting sales tax on the sale of the vehicle to Dealership. However, this also means that Taxpayers properly paid sales tax at the time they purchased the vehicle and were not due a refund of that sales tax when they resold the vehicle back to Dealership.

FINDING

Taxpayers' protest is denied.

July 10, 2018

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