

Memorandum of Decision Number: 04-20182022
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 entitled to refund of the Indiana sales tax paid on the purchase of a cargo trailer because the transaction satisfied all of the requirements for the sales tax exemption applicable to cargo trailers purchased by out-of-state residents.

ISSUE

I. Sales Tax - Refund - Non-Resident Cargo Trailer Purchase.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-5-24; IC § 6-2.5-5-39; 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 72 (March 2018).

Taxpayer protests the refund denial of sales tax which was collected at the time of the purchase of a cargo trailer.

STATEMENT OF FACTS

Taxpayer is an individual residing in Tennessee. In October 2017, Taxpayer purchased a cargo trailer from a dealership located in Indiana ("Dealership"). The Dealership collected sales tax in the amount of \$4,077.50. The sales tax was calculated based on 7 percent of the sale price of the trailer. Taxpayer took possession of the trailer at the Dealership's business location in Indiana and titled and registered it in Tennessee. Taxpayer stated that she was not required to pay gross retail tax in her home state because she had a valid agricultural exemption certificate issued by the state of Tennessee.

Taxpayer filed a claim for refund with the Indiana Department of Revenue ("Department") requesting a refund of the full amount of Indiana sales tax that was collected by the Dealership at the time of purchase. Upon review, the Department denied Taxpayer's refund request, stating in relevant part, "the Indiana sales tax rate imposed on such a transaction is the state-level sales tax rate of the state where the vehicle will be titled and registered. . . . [T]he state of Tennessee has a sales tax rate of 7 [percent] on vehicles."

Taxpayer protested the refund denial. An administrative phone hearing was held. This Memorandum of Decision results. Further facts will be provided as necessary.

I. Sales Tax - Refund - Non-Resident Cargo Trailer Purchase.

DISCUSSION

Taxpayer requested a refund of the sales tax paid on a cargo trailer purchase on the basis that she possesses a Tennessee agricultural exemption certificate.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which provides, in relevant part:

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.

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 100 (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).

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). In general, the purchaser "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." IC § 6-2.5-2-1(b).

When a purchaser claims the purchase "is exempt from the state gross retail and use taxes, [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). The only persons authorized to issue exemption certificates include:

- (1) Retail merchants, wholesalers, and manufacturers, **who are registered with the department** under this chapter.
- (2) Organizations which are exempt from the state gross retail tax under [IC 6-2.5-5-21](#), [IC 6-2.5-5-25](#), or [IC 6-2.5-5-26](#) and **which are registered with the department** under this chapter.
- (3) Persons who are exempt from the state gross retail tax under [IC 6-2.5-4-5](#) and **who receive an exemption certificate from the department**.
- (4) Other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

Ind. Code Ann. § 6-2.5-8-8(b) (**emphasis added**). Thus, only persons who receive an exemption certificate from the Indiana Department of Revenue are entitled to a gross retail tax exemption on transactions occurring in Indiana. "A seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail or use 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.

Taxpayer's position is that the cargo trailer was not purchased for use in Indiana, and that Indiana should recognize the exemption certificate issued by the state of Tennessee. With respect to interstate transactions, IC § 6-2.5-5-24(b) provides:

Transactions are exempt from the state gross retail tax to the extent that the gross retail income from those transactions is derived from gross receipts that are . . . (2) derived from business conducted in commerce between the state and either another state or a foreign country, to the extent the state is prohibited from taxing that gross income by the Constitution of the United States.

See also [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#). However, this exemption does not apply when a retail purchaser takes delivery of the property in Indiana. The Department's Sales Tax Information Bulletin 28S (March 2017), 20170426 Ind. Reg. 045170210NRA, addressing issues concerning sales of motor vehicles and trailers, further explains the interstate commerce exception as follows:

IV. INTERSTATE COMMERCE EXEMPTION AND SPECIAL TAX RATE

. . .

B. Vehicles Delivered Outside Indiana

A vehicle or trailer sold in **interstate commerce** is not subject to the Indiana sales tax. To qualify as being "sold in interstate commerce," the vehicle or trailer **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**).

During the hearing, Taxpayer stated that she took possession of the trailer at the Dealership's location in Indiana. The trailer was not sold in interstate commerce because the dealer did not deliver the trailer outside Indiana, and the transaction began and concluded in Indiana. Thus, the sale of the trailer was an Indiana sale subject to Indiana sales tax. See IC § 6-2.5-13-1(d)(1) ("When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.").

However, IC § 6-2.5-5-39 provides a statutory exemption for certain purchases of recreational vehicles and cargo trailers by non-resident purchasers, which states, in relevant part:

(c) A transaction involving a cargo trailer or a recreational vehicle is exempt from the state gross retail tax if:

- (1) the purchaser is a nonresident;
- (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
- (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;
- (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; and
- (5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.

A transaction involving a cargo trailer or recreational vehicle that does not meet the requirements of subdivision (5) is not exempt from the state gross retail tax.

A non-resident purchaser may claim this exemption at the time of purchase by submitting to the retail merchant an Affidavit of Exemption by a Nonresident of Indiana on the Purchase of a Recreational Vehicle or Cargo Trailer ("ST-137RV Affidavit") stating the purchaser's intent to transport the trailer to a destination outside of Indiana within 30 days, and title or register the trailer for use in another state. IC § 6-2.5-5-39(d).

However, the sales tax exemption for non-resident purchasers of cargo trailers does not apply to residents of every state. Sales Tax Information Bulletin 72 (March 2018), 20180425 Ind. Reg. 045180188NRA, which was made retroactive to July 1, 2017, provides additional guidance on the sales tax exemption applicable specifically to cargo trailers and recreational vehicles purchased by non-residents:

III. EXEMPTION FROM THE SALES TAX

Sales of recreational vehicles and cargo trailers by Indiana dealers destined for out-of-state registration are exempt from the Indiana sales tax if the state where the recreational vehicle or cargo trailer will be registered provides a similar exemption for an Indiana resident making a purchase in that state. This exemption also applies to states that do not impose a sales tax. The jurisdictions [listed] provide a drive-out exemption, provide reciprocity, or have no sales tax.

Tennessee is one of the states that has a reciprocal statute that provides for a sales tax exemption for cargo trailers purchased in that state and registered in Indiana, thus satisfying the requirement of IC § 6-2.5-5-39(c)(5). See Sales Tax Information Bulletin 72. Because Taxpayer is a resident of Tennessee, transported the trailer to Tennessee within 30 days, and titled and registered the trailer in Tennessee, the transaction met all of the requirements of the statutory sales tax exemption for non-resident cargo trailer purchasers.

In conclusion, Taxpayer's cargo trailer purchase was an Indiana retail transaction subject to Indiana sales tax. Because there is no evidence that the Dealership and Taxpayer executed an ST-137RV Affidavit at the time of

purchase, the Dealership fulfilled its obligation to collect and remit Indiana sales tax at the time of purchase. However, Taxpayer has demonstrated that her purchase satisfies all of the requirements for the exemption to apply under IC § 6-2.5-5-39(c), and Taxpayer is therefore entitled to a refund of the Indiana gross retail tax collected on the cargo trailer at issue.

FINDING

Taxpayer's protest is sustained.

November 16, 2018

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