

Letter of Findings: 04-20181715
Gross Retail Tax
For the Years 2014, 2015, and 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Despite the fact that Dealer purportedly delivered its customers' vehicles to an out-of-state location, Indiana Recreational Vehicle Dealer was required to collect sales tax from those out-of-state customers. Following the Indiana Supreme Court's reasoning in *Richardson's RV*, the Department concluded that the Dealer's putative delivery arrangements served no legitimate business purpose.

ISSUE

I. Gross Retail Tax - Sales to Out-of-State Customers.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-39(c); IC § 6-8.1-5-1(c); *Richardson's RV, Inc. v. Indiana Department of State Revenue*, 2018 WL 6333775 (Ind. Tax Ct. Jan. 5, 2018); [45 IAC 2.2-6-8](#); Sales Tax Information Bulletin 28S (March 2017); Sales Tax Information Bulletin 28S (November 2016); Sales Tax Information Bulletin 28S (April 2012).

Taxpayer argues that it was not required to collect Indiana sales tax on trailers sold to out-of-state customers because Taxpayer delivered the trailers to an out-of-state location.

STATEMENT OF FACTS

Taxpayer is an Indiana recreational vehicle dealer. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for tax years 2014, 2015, and 2016. The audit resulted in the assessment of sales tax on certain RV sales. Taxpayer protested the imposition of sales tax on certain transactions. An administrative hearing was conducted and this Letter of Findings results.

I. Gross Retail Tax - Sales to Out-of-State Customers.

DISCUSSION

The issue is whether Taxpayer has established that it was not required to collect and remit sales tax on cargo trailers sold to out-of-state customers.

The Department's audit found that "[T]axpayer made sales of cargo trailers without collecting sales tax to customers that are residents of Michigan, which is among the nonreciprocal states where no exemption is provided" The audit report explained the significance of Michigan's status as a nonreciprocal state.

[P]urchases of cargo trailers made from Indiana dealers by the nonresidents of Indiana to be registered or titled in one of the nonreciprocal states and counties are subject to Indiana sales tax at the time of purchase and dealers must collect the Indiana sales tax.

Taxpayer disagreed arguing that the trailers "were delivered by [T]axpayer to a location outside of Indiana." However, the Department's audit cited to Sales Tax Information Bulletin 28S (March 2012), [20120530-IR-045120259NRA](#), which sets out certain documentation requirements as follows:

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. See also Sales Tax Information Bulletin 28S (March 2017), 20120530 Ind. Reg. 045120259NRA; Sales Tax Information Bulletin 28S (November 2016), [20161228-IR-0451605562NRA](#).

(*Emphasis added*).

The Department's audit found that Taxpayer was unable to provide the requisite documentation. Instead Taxpayer provided sales invoices which were rubber stamped as "this unit was shipped to [out-of-state location]." Neither the invoices nor the stamped information indicated the means of delivery, date of delivery, or delivery charges. According to the audit report, the out-of-state location was "unrelated to the [T]axpayer or customers address . . . [but was] for an old motel across the state line with less than a mile from the [Taxpayer's] Indiana business location."

A further review of the available evidence failed to reveal any documentation which contained delivery to the customer's home or business address. Taxpayer was able to provide Indiana "purchaser affidavits" (Form ST-137RV) each of which stipulated that the customer took possession of the vehicle at Taxpayer's Indiana business location in apparent contradiction to Taxpayer's other assertions.

Even though the documentation purported to show delivery to its customers at the motel parking lot, the audit noted that Taxpayer did not collect the requisite Michigan sales tax.

Taxpayer argues that it consistently acted in good faith and simply gave its customers the option of paying Indiana sales tax or the customers' home state tax. In cases in which the customer chose to pay the Michigan sales tax, Taxpayer indicates that it drove the vehicle seven miles to the hotel parking lot to accommodate that decision. Taxpayer did so believing that "The customer would register and pay the Michigan sales tax upon title and registration in Michigan."

Taxpayer states that its delivery purposes were "designed to further the legitimate business purposes of ensuring tax is paid to the proper jurisdiction, avoiding double taxation, and maintaining competitive pricing." However, as the Indiana Supreme Court stated in *Richardson's RV, Inc. v. Indiana Department of State Revenue*, 2018 WL 6333775 (Ind. Dec. 5, 2018) such arguments "elevate the form of these deliveries. And tellingly all these purposes are tax - not business based." *3 The court concluded that the delivery arrangements reflected "no legitimate business purposes." *Id.* The court found fit to consider them "a sham for taxation purposes." *Id.*

Nonetheless, Taxpayer concludes that these transactions should be exempt because it has documentation supporting its position that delivery of the cargo trailers took place outside Indiana. In making its argument, the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

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.

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

Of relevance is IC § 6-2.5-5-39(c), which states:

- 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.

(Emphasis added).

Sales Tax Information Bulletin 28S clarifies this exemption and lists the states that do not provide an exemption from sales, use, or similar taxes imposed on recreational vehicles:

A full exemption is applicable to the purchase of a recreational vehicle (RV) or a cargo trailer by a NONRESIDENT if the purchaser affirms that the purchase will be registered/titled within 60 days in a reciprocal state or country. A reciprocal state is one that allows an exemption to an Indiana resident who purchases an RV or a cargo trailer to be registered/titled in Indiana.

Arizona	Mississippi
California	North Carolina
Florida	South Carolina
Hawaii	Canada
Massachusetts	Mexico
Michigan	All Other Countries

(Bold in original).

Therefore, Indiana sales tax must be collected on cargo trailers sold in Indiana when the cargo trailer is to be registered in Indiana or one of the above listed states or nations.

Additionally, Indiana sales tax will not be collected on a cargo trailer delivered outside of Indiana, regardless of where it is to be registered. Sales Tax Information Bulletin 28S, further clarifies stating:

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.

(Emphasis added). **(Bold in original).**

Therefore, as provided by Sales Tax Information Bulletin 28S, to be exempt from collecting Indiana sales tax, an Indiana RV dealer must provide a sales invoice or purchase order which lists the delivery terms in order to prove that the vehicle was sold outside of Indiana.

Taxpayer argues that it provided sufficient documentation when it supplied ST-137RV forms, signed by purchasers, stating that the delivery occurred outside Indiana. After review, the Department notes that this is delivery documentation which is not sufficient by itself according to Sales Tax Information Bulletin 28S. Sales invoices or purchase orders are required to establish out-of-state delivery. Since Taxpayer only provided delivery documentation and not the required sales invoices or purchase orders, which do not meet the standard explained in Sales Tax Information Bulletin 28S, the Department's audit correctly concluded that the sales of the cargo trailers were Indiana transactions subject to sales tax. The Department's audit correctly assessed the tax under authority of IC § 6-2.5-2-1 and [45 IAC 2.2-6-8](#).

Taxpayer has failed to meet its statutory burden under IC § 6-8.1-5-1(c) of establishing that the assessment was wrong. Based on the information available, the Department concludes that, as in the *Richardson's RV* case, the putative deliveries to an empty parking lot served no business purposes except for the avoidance of tax obligations.

FINDING

Taxpayer's protest is respectfully denied.

December 11, 2018

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