

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2019-06ST
November 8, 2019

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

ISSUES

Sales Tax - Collection of Sales Tax on the Sale of Trailers

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-2-3](#); [IC 6-2.5-6-1](#); [IC 6-6-5-2](#); [IC 9-13-2-105](#); [45 IAC 2.2-3-5](#); Sales Tax Information Bulletin #28S (May 2019); Sales Tax Information Bulletin #72 (May 2019); Sales Tax Information Bulletin #84 (August 2014).

A taxpayer ("Company 2") is seeking an opinion as to the procedures and policies for the collection and remittance of Indiana sales tax on its custom, specialty trailers. Specifically, Company seeks a ruling regarding the following:

1. Is it correct that, despite not having a Standard Industrial Classification (SIC) code that is naturally subject to the law regarding the use of ST-103-CAR, [Company 2] must file that form, due to the fact that a Trailer is considered a "Motor Vehicle" and, on occasion, they must collect sales tax?
2. [Company 2]'s sales volume, that triggers Sales Tax collection, is so low that they were assigned an "annual" filing Frequency Status effective 1/1/2012. Is it correct that [Company 2]'s Filing Frequency status will NOT change as a result of being subject to the law of having to file the ST-103-CAR, and that, until their [onsite] "out of state" + Indiana sales volume warrants a change, their Filing Frequency Status will remain annual?
3. Finally, is it correct that, when [Company 2] sells a trailer in an "Out of State" sale where the customer picks up the Trailer at [Company 2]'s location (i.e. Free on Board FOB "Shipping Dock" or "Origin"), they are only required to collect the State Level Sales Tax of the customer's destination State, NOT any lower level Sales Taxes, to include but not limited to County, or City level Sales Taxes?

STATEMENT OF FACTS

In 2015, Company 1 was issued a Revenue Ruling by the department, 2014-09ST ([20150429-IR-045150102NRA](#)). The "Statement of Facts" as discussed in the prior Revenue Ruling were as follows:

Company, in its own words, is "a manufacturer of [c]ustom, [s]pecialty [t]railers." Company's trailers are not cargo trailers. They are trailers used as mobile worksites for the tech field. They are either standalone trailers, trailers inserted into the beds of pickup trucks, or trailers "spliced" into the existing vehicle. Company occasionally "will, from their manufacturing facility, transact a sale where sales tax collection is required."

Company 1 was recently purchased by a successor entity, Company 2, which asserts that they are operating from the same address and manufacturing essentially the same products as Company 1. Although some of their products are different, the new products are still a "mobile" laboratory piece of trailer or chassis.

Company 2 now requests that the department issue a ruling to it based on the same fact pattern.

DISCUSSION

In general, [IC 6-2.5-2-1\(a\)](#) imposes sales tax on retail transactions made in Indiana. Additionally, [45 IAC 2.2-3-5\(b\)](#) provides that a motor vehicle or trailer purchased from a registered Indiana dealer is subject to Indiana sales tax. The dealer is required to collect the sales tax and provide a completed Form ST-108 to the customer showing that the tax has been paid. [45 IAC 2.2-3-5\(c\)](#).

While these provisions have historically included sales where the purchaser intended to immediately register, license, and/or title the motor vehicle or trailer for use in another state, the Indiana General Assembly enacted legislation in 2014 that affected the sales of motor vehicles to individuals or entities that intend to title and register the vehicle for use in another state or country. As of July 1, 2014, [IC 6-2.5-2-3](#) provides that the sales tax rate imposed on such sales is the state-level sales tax rate of the state in which the vehicle will be titled and/or registered. [IC 6-2.5-2-3](#) provides in pertinent part the following:

- (a) As used in this section, "motor vehicle" means a vehicle that would be subject to the annual license excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana.
- (b) Notwithstanding section 2 of this chapter, the state gross retail tax rate on a motor vehicle that a purchaser intends to:
 - (1) transport to a destination outside Indiana within thirty (30) days after delivery; and
 - (2) title or register for use in another state or country;is the rate of that state or country (excluding any locally imposed tax rates) as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (c).

While trailers are subject to the motor vehicle excise tax pursuant to [IC 6-6-5-2](#), they do not meet the definition of a "motor vehicle" pursuant to [IC 9-13-2-105](#), as trailers are not self-propelled. As such, the provisions of [IC 6-2.5-2-3](#) do not apply to trailers. While a statute was in effect between July 1, 2017, and June 30, 2019, that required a similar special rate to be collected on the purchase of cargo trailers and recreational vehicles by out-of-state purchasers ([IC 6-2.5-2-4](#)), that statute is now expired. Furthermore, the definition of "cargo trailer," for purposes of [IC 6-2.5-2-4](#), was tied to the definition of "cargo trailer" found in [IC 6-2.5-5-39\(a\)](#), which is as follows:

- (a) As used in this section, "cargo trailer" means a vehicle:
 - (1) without motive power;
 - (2) designed for carrying property;
 - (3) designed for being drawn by a motor vehicle; and
 - (4) having a gross vehicle weight rating of at least two thousand two hundred (2,200) pounds.

Company 2's trailers would not meet this definition, as the trailers are not designed to carry property. They are designed to be mobile worksites or laboratories. As a result, [IC 6-2.5-5-39](#), which provides for sales tax exemption for nonresident purchasers of recreational vehicles and cargo trailers if the purchaser's state of registration offers reciprocal treatment to Indiana purchasers of recreational vehicles and cargo trailers, does not apply to the sale of Company 2's trailers.

Company 2's first question is whether it needs to file Form ST-103CAR, as Company 2 does collect Indiana sales tax on occasion, and would need to remit the tax to the department. In answer to this question, Company 2 would not need to file Form ST-103CAR (the sales tax return for motor vehicle dealers, which for periods after June 30, 2019, is no longer being used to report sales of cargo trailers) or Form ST-108NR (the Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle For a Nonresident) because its trailers are not "motor vehicles" for purposes of [IC 6-2.5-5-3](#). Sales Tax Information Bulletin #84, which provides the department's guidance concerning the application of [IC 6-2.5-2-3](#), also clarifies that a "trailer" does not meet the definition of a "motor vehicle." The ST-103CAR was developed specifically for motor vehicle dealers, which Company 2 is not.¹ The ST-108NR is required to be filed when a motor vehicle dealer sells a motor vehicle to a nonresident who will register and title the vehicle within thirty days in their home state. Because trailers are not considered motor vehicles for purposes of [IC 6-2.5-2-3](#), the trailers would not be subject to the ST-108NR filing requirements either. Instead, Company 2 would need to remit any sales tax collected on an ST-103.

With regard to whether Company 2's filing frequency will change as a result of having to file the ST-103CAR, the department already established above that Company 2 would not be required to file the ST-103CAR. Whether Company 2 is selling to an Indiana resident or a nonresident does not affect its filing frequency. The only change that will affect Company 2's filing frequency status is if its annual sales tax liability exceeds one thousand dollars (\$1,000). [IC 6-2.5-6-1](#) provides guidance in pertinent part as follows:

- (a) **Except as otherwise provided in this section, each person liable for collecting the state gross retail or use tax shall file a return for each calendar month and pay the state gross retail and use taxes that the person collects during that month.** A person shall file the person's return for a particular month with the department and make the person's tax payment for that month to the department not more than thirty (30) days after the end of that month, if that person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year did not exceed one thousand dollars (\$1,000). If a person's average monthly liability for

collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year exceeded one thousand dollars (\$1,000), that person shall file the person's return for a particular month and make the person's tax payment for that month to the department not more than twenty (20) days after the end of that month.

...

(c) Instead of the reporting periods required under subsection (a), the department may permit a retail merchant to report and pay the merchant's state gross retail and use taxes for a period covering a calendar year, if the retail merchant's state gross retail and use tax liability in the previous calendar year does not exceed one thousand dollars (\$1,000). A retail merchant using a reporting period allowed under this subsection must file the merchant's return and pay the merchant's tax for a reporting period not later than the last day of the month immediately following the close of that reporting period.

(Emphasis added).

The Department's website provides further clarification as follows:

The filing frequency is based on the average monthly liability throughout the tax year. Remember your filing status can be changed if there is an increase or decrease in the amount of tax you owe throughout the year. You will be notified of any changes to your filing status before the beginning of the next tax year. Also if your average monthly tax exceeds \$5,000, you are required to make payments by Electronic Funds Transfer. Call (317) 233-4015 if you have questions on your filing status.²

Company 2's next question is whether it is required to collect the sales tax of the customer's destination state if it sells a trailer to a nonresident and the customer picks up the trailer at Company 2's location. Again, this is not a sale where [IC 6-2.5-2-3\(b\)](#) or the ST108NR would apply, because their trailers do not fall under the definition of "motor vehicles." Furthermore, as mentioned above, because Company's trailers are not "cargo trailers," the exemption at [IC 6-2.5-5-39](#) does not apply. Therefore, pursuant to [IC 6-2.5-13-1\(d\)\(1\)](#), if the mobile trailer is received by the customer at Company 2's Indiana location, then Indiana Sales Tax would be collected at 7% regardless of where the customer will take the mobile trailer afterwards. The Indiana sales tax would then be remitted by Company 2 to the department using Form ST-103.

RULING

Company 2 is not required to file Form ST-103CAR. Company 2 would instead remit any Indiana sales tax collected to the department using Form ST-103. Company 2's filing frequency is dependent on its annual sales tax liability. Company 2 is further not required to collect sales tax at the rate of its customer's base state as enumerated in [IC 6-2.5-2-3](#), or to fill out Form ST-108NR.

One final note regarding Company 2's conversion of a motor vehicle when it splices a trailer into an existing motor vehicle: if Company 2 actually purchases a motor vehicle, adds a trailer to the motor vehicle, and then sells the converted motor vehicle, Company 2 is selling a motor vehicle and the ruling above would not apply. If, however, Company 2 is converting a motor vehicle owned by another person, the ruling as outlined above would apply.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

¹Taxpayer has a "Converter Manufacturer" license with the Indiana Secretary of State's Office.

²<http://www.in.gov/dor/4006.htm>

