

Final Order Denying Refund Number: 04-20200085R
Sales/Use Tax
For The 2019 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

Indiana Business was not entitled to the refund of tax on a vehicle because it failed to establish that it overpaid the sales tax on the vehicle pursuant to its financing arrangement with its lender, a bank. Even if, assuming Indiana Business rightfully returned the vehicle, the seller refunded the tax because, upon repurchase, the seller paid Business and its bank together more than the total amount collected from original sale, including the sales tax. As a result, the Indiana Department of Revenue properly denied the refund claim.

ISSUE

I. Sales and Use Tax - Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-8.1-9-1; *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Monarch Beverage Co. v. Indiana Dep't of State Revenue*, 589 N.E.2d 1209 (Ind. Tax Ct. 1992); [45 IAC 2.2-2-1](#); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015).

Taxpayer protests the refund denial of sales tax on a vehicle.

STATEMENT OF FACTS

Taxpayer is a sole proprietor doing business in Indiana. In November 2019, Taxpayer filed a Form GA-110L, Claim for Refund (Claim Number 2057153). Taxpayer sought a refund of tax on a vehicle, a selling price of \$38,500. Taxpayer stated the following:

Purchased a truck from [the Seller, a retail merchant]. BMV collected sales tax [and] later noticed damage to truck. [The Seller] bought [the] truck back. I didn't use truck nor own it anymore.

The Indiana Department of Revenue ("Department") reviewed and denied the entire refund claim on January 31, 2020. Taxpayer protested the refund denial. An informal administrative hearing was held by telephone on February 13, 2020. This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales and Use Tax - Refund.

DISCUSSION

Taxpayer initially submitted a claim seeking a refund of \$2,875.85 tax on the ground that it did not own the truck because the Seller repurchased the vehicle. Upon review, the Department denied the claim, explaining the following:

The department did not receive documentation that shows the truck was purchased and titled for [Taxpayer].

Taxpayer protested the denial, claiming that it was entitled to a refund of the \$2,695 sales tax on the vehicle because it "didn't use truck nor own it anymore." This \$2,695 was the amount of tax on a vehicle according to an Application For Certificate of Title for A Vehicle ("Application"). The issue in this case thus is whether Taxpayer was entitled to the refund.

Under Indiana tax law, when a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a refund claim "within three (3) years of . . . [t]he due date of the return [or] . . . [t]he date of payment" under IC § 6-8.1-9-1(a).

[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.

Thus, when a taxpayer determines it 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 (October 2015), 20151125 Ind. Reg. 045150407NRA. 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](#).

Throughout the protest process, Taxpayer argued that it was entitled to a refund of \$2,695 sales tax on the vehicle because the Seller "bought [the] truck back" and it did not own or use the truck any more. Presumably, Taxpayer argued that it was entitled to a refund of sales tax on that truck because the truck was returned to the Seller, a retail merchant. To support its protest, Taxpayer provided copies of "Indiana Certificate of Vehicle Registration," and "Repurchase Agreement and General Release," in addition to the Application.

Upon review, however, Taxpayer's reliance on the above-mentioned supporting documents is misplaced. In particular, first, Indiana imposes "sales tax" on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). The purchaser generally is liable for the sales tax ("as a separate added amount to the consideration in the transaction") and "[t]he **retail merchant shall collect the tax as agent for the state.**" IC § 6-2.5-2-1(b) (**Emphasis added**). Taxpayer's Application in this case showed that, on or about August 29, 2019, Taxpayer was permitted to finance its purchase (approximately \$41,195 in total, including the tax). Thus, at the time of the vehicle sale, the Lender was the person who actually paid the tax on vehicle under that financing arrangement. The Application clearly demonstrated that the lien was attached to that vehicle pursuant to the common industry practice. Without further details provided by Taxpayer concerning its auto loan, Taxpayer in this instance could have financed the total amount to purchase that vehicle without paying any out of its pocket.

Subsequently, on or about September 30, 2019, Taxpayer, the Seller, and the Lender together signed the "Repurchase Agreement and General Release," which stated the following:

[The Seller] has agreed, without an admission of fault or liability, to repurchase the Vehicle(s) from [Taxpayer]

.....

[The Seller] will pay the Purchase Price of \$41, 919.00 ("Purchase Price"). The Purchase Price will be paid and allocated as follows: (a) \$500.00 to [Taxpayer], and (b) \$41,419.00 to [Taxpayer's] Lender

It should be noted here that repurchasing a vehicle generally is a separate transaction, which could be subject to sales and use tax. See *Monarch Beverage Co. v. Indiana Dep't of State Revenue*, 589 N.E.2d 1209, 1214 (Ind. Tax Ct. 1992) (explaining that "[s]ales and use taxes are transactional taxes imposed on the gross income received from a retail transaction" and "sales or use tax can be collected more than once on the same item if the item is the subject of more than one non-exempt retail transaction . . .").

Nonetheless, for the sake of argument, assuming that Taxpayer in this case timely *returned* the damaged truck - namely, revoking its acceptance of the nonconforming goods - to the Seller, the Repurchase Agreement and General Release showed that the Seller subsequently paid a total of \$41,919 to the Lender and Taxpayer together. That is, the Seller actually *refunded* \$724 more than the total amount of \$41,195 (i.e., \$38,500 plus the \$2,695tax) it collected on or about August 29, 2019. Thus, even if assuming that the vehicle was *returned* to the Seller, the tax on the vehicle was properly *refunded*. Taxpayer's documentation failed to establish that Taxpayer and its bank overpaid the sales tax on the vehicle when the transaction was arguably unwound.

Furthermore, Indiana imposes tax on the use "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 *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002). Accordingly, under Indiana law, Indiana Bureau of Motor Vehicles may collect the use tax when the sales tax was not paid at the time of the sale.

In this instance, Taxpayer referenced its Application and the Indiana Certificate of Vehicle Registration to support that it was entitled to the refund because "BMV collected sales tax." Taxpayer is mistaken. Specifically, Taxpayer's documents showed that it did not purchase the truck from an isolated or occasional sale. Rather, Taxpayer purchased the truck from the Seller, a retail merchant, on or about August 29, 2019.

Even if, assuming that the Seller did not collect the sales tax at the time of sale, when Taxpayer attempted to register at the Indiana BMV in September 2019, Taxpayer exercised its right or power of ownership over the vehicle, a use tax was properly due. The BMV would have issued a receipt to substantiate the collection of \$2,695 tax payment on that vehicle in September. Taxpayer failed to provide that piece of evidence to the Department to support its protest.

Finally, while Taxpayer was required to register the vehicle in order to drive the vehicle on public road, the fees associated with its vehicle registration were beyond the scope of this protest. Taxpayer's documents showed that Taxpayer arguably *returned* and thus the Seller repurchased the vehicle on or about September 30, 2019. But, the Indiana Certificate of Vehicle Registration was issued in February 2020, more than four (4) month after the Seller bought back the vehicle in question.

In short, given the totality of the circumstances, in the absence of other verifiable supporting documents, Taxpayer was not entitled to the refund because its documentation failed to support that it overpaid the tax.

FINDING

Taxpayer's protest is denied.

May 19, 2020

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