

## DEPARTMENT OF STATE REVENUE

04-20200108.MOD

**Memorandum of Decision: 04-20200108**  
**Sales & Use Tax**  
**For Tax Year 2019**

**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 determination.

**HOLDING**

Corporation provided sufficient documentation to support that the vehicle is exempt from Indiana sales tax.

**ISSUE**

**I. Sales Tax - Exemption.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-2-2; IC § 6-2.5-2-3; IC § 6-2.5-13-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, (Ind. 2014).

Taxpayer protested the denial of the refund claim.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state corporation which purchased a vehicle in Indiana and registered it in Wyoming. Taxpayer filed a claim for refund for sales taxes paid on the vehicle in 2019. The Indiana Department of Revenue ("Department") denied Taxpayer's claim for refund. Taxpayer protested the denial and the Department held an administrative hearing. This Memorandum of Decision results. Additional facts will be provided as necessary.

**I. Sales Tax - Exemption.**

**DISCUSSION**

Taxpayer is a Wyoming Corporation that bought a drill rig in Indiana and paid sales tax. Taxpayer had the rig delivered to and registered the vehicle in Wyoming. Taxpayer then filed a claim for refund for sales taxes paid. The Department denied the Taxpayer's claim for refund stating, "According to the bill of sale provided by the seller, the truck was picked up by the purchaser or an agent of the purchaser in Indiana and is therefore considered an Indiana sale. Any sale made within Indiana is subject to 7 [percent] sales tax." Taxpayer argues that a refund is due because the Wyoming Department of Transportation informed Taxpayer that the total sales tax would be exempt because it's a commercial vehicle.

As a preliminary matter, 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 shall be entitled to deference.

IC § 6-2.5-2-1 provides:

- (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.
- (c) A retail merchant that does not have a physical presence in Indiana shall, as an agent for the state, collect the gross retail tax on a retail transaction made in Indiana, remit the gross retail tax as provided in this article, and comply with all applicable procedures and requirements of this article as if the retail merchant has a physical presence in Indiana, if the retail merchant meets either of the following conditions for the calendar year in which the retail transaction is made or for the calendar year preceding the calendar year in which the retail transaction is made:
  - (1) The retail merchant's gross revenue from any combination of:

- (A) the sale of tangible personal property that is delivered into Indiana;
  - (B) a product transferred electronically into Indiana; or
  - (C) a service delivered in Indiana;
- exceeds one hundred thousand dollars (\$100,000).
- (2) The retail merchant sells any combination of:
- (A) tangible personal property that is delivered into Indiana;
  - (B) a product transferred electronically into Indiana; or
  - (C) a service delivered in Indiana; in two hundred (200) or more separate transactions.
- (d) A marketplace facilitator must include both transactions made on its own behalf and transactions facilitated for sellers under [IC 6-2.5-4-18](#) for purposes of establishing the requirement to collect gross retail or use tax without having a physical presence in Indiana for purposes of subsection (c). In addition, except in instances where the marketplace facilitator has not met the thresholds in subsection (c), the transactions of the seller made through the marketplace are not counted toward the seller for purposes of determining whether the seller has met the thresholds in subsection (c).

IC § 6-2.5-2-2 provides:

- (a) The state gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary transaction and is imposed at seven percent (7 [percent]) of that gross retail income.
- (b) If the tax computed under subsection (a) carried to the third decimal place results in the numeral in the third decimal place being greater than four (4), the amount of the tax shall be rounded to the next additional cent.
- (c) A seller may elect to round the tax under subsection (b) on a transaction on an item basis or an invoice basis. However, a seller may not round the tax under subsection (b) to circumvent the tax that would otherwise be imposed on a transaction using an invoice basis.

In addition IC § 6-2.5-2-3 provides:

- (a) As used in this section, "motor vehicle" means a vehicle that would be subject to the vehicle 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).
- (c) The department of state revenue shall prescribe the form of the affidavit required by subsection (b). In addition to the certification required by subsection (b), the affidavit must include the following:
  - (1) The name of the state or country in which the motor vehicle will be titled or registered.
  - (2) An affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true.
  - (3) Any other information required by the department of state revenue for the purpose of verifying the information contained in the affidavit.
- (d) The department may audit affidavits submitted under this section and make a proposed assessment of the amount of unpaid tax due with respect to any incorrect information submitted in an affidavit required by this section.

IC § 6-2.5-13-1(d) provides:

- (d) *The retail sale, excluding lease or rental, of a product shall be sourced as follows:*
  - (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
  - (2) *When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.*
  - (3) *When subdivisions (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.*
  - (4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a

purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

*(Emphasis added).*

This was a taxable sale under IC § 6-2.5-2-1, as is any sale made within Indiana is subject to 7 [percent] sales tax. Taxpayer argues that the rig should be exempt under IC § 6-2.5-13-1(d), and the Department agrees. Taxpayer provided documentation establishing that the vendor paid a third party to deliver the rig to Taxpayer in Wyoming. Therefore, Taxpayer took possession of the rig in Wyoming. Thus, under IC § 6-2.5-13-1(d)(2) the sale is sourced to Wyoming, and therefore Indiana sales tax is not due on the transaction. Therefore, Taxpayer has established that the Department's stated reason for denying the claim for refund is incorrect.

### **FINDING**

Taxpayer's protest is sustained.

May 19, 2020

*Posted: 07/29/2020 by Legislative Services Agency*  
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