

**Final Order denying refund: 13-20191144R
Gasoline Use Tax
For Periods 2016-2018**

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 is provided for the convenience of the reader and is not part of the analysis contained in this document

HOLDING

Sale for resale exemption is not allowed under Gasoline Use Tax; therefore, Company is not entitled to a refund of Gasoline Use Tax.

ISSUE

I. Use Tax--Gasoline.

Authority: IC § 6-2.5-8-1; IC § 6-2.5-2-1; IC § 6-2.5-3.5-25; IC § 6-2.5-3.5-19; IC § 6-2.5-3.5-21; *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dept. of State Revenue v. Hertz Corp.*, 457 N.E.2d 246 (Ind. Ct. App. 1983); Information Bulletin 83 (June 2014).

Taxpayer protests its refund denial.

STATEMENT OF FACTS

Taxpayer is a vehicle rental company conducting business in Indiana. In February 2019 Taxpayer filed a claim for refund with the Indiana Department of Revenue ("Department") for use tax paid on gasoline for tax years 2016-2018. The Department denied Taxpayer's refund request. Taxpayer protested this denial. An administrative hearing was held on Taxpayer's protest, and this decision results. Additional facts will be provided as necessary.

I. Use Tax--Gasoline.

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). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction.

IC § 6-2.5-3.5-25 discusses exempt transactions, refunds, and procedures:

If a sale of gasoline is exempt from the gasoline use tax, the person that pays the tax to the retail merchant may file a claim for refund with the department. The person must file the claim on the form, in the manner, and with the supporting documentation, prescribed by the department. If a person properly files a claim for refund, the department shall refund to the person the gasoline use tax collected with respect to the exempt transaction.

Taxpayer claims it is exempt from Gasoline Use Tax ("GUT") because it resells the gas as part of its rental agreement with customers. 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). 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 101.

GUT replaced prepaid sales tax. GUT is collected at the distributor level and is owed by the merchant that purchases the gas, whereas with prepaid sales tax the merchant prepaid sales tax on gasoline. In July 1, 2014, the General Assembly specifically wanted to move the collection responsibility up the supply chain to take away the responsibility from the merchant, thus the General Assembly enacted GUT. GUT will not be collected when a qualified distributor sells to qualified distributor or exports the gasoline to another state. IC § 6-2.5-3.5-16 states:

A qualified distributor, a refiner, or a terminal operator that sells gasoline for delivery to a retail merchant located in Indiana shall remit the gasoline use tax to the department for each gallon of gasoline sold. The person shall remit that amount regardless of the amount of gasoline use tax that the person has actually collected under this chapter. However, the person is entitled to deduct and retain the amounts prescribed in [IC 6-2.5-6-10](#) and [IC 6-2.5-6-11](#).

Taxpayer explained in its protest letter that the gasoline use tax was passed by the Indiana legislators to facilitate the collection of the gross retail tax by shifting the point of collection from the retailer to the distributor; "[gasoline use tax] was not intended to provide for a material increase in tax revenue, or remove any exemptions, or otherwise change the economic burden of the tax."

In addition, Taxpayer states that it is purchasing fuel to resell to its customers for ultimate consumption, and therefore its original purchase of the fuel is a purchase for resale, which is exempt from the gross retail tax. Taxpayer's protest goes on to state that "Pursuant to I.C. § 6-5-3.5-25, 'if a sale of gasoline is exempt from the gasoline use tax, the person that pays the tax to the retail merchant may file a claim for refund with the Department.'" Taxpayer goes on to rely on *Indiana Dept. of State Revenue v. Hertz Corp.*, stating that the Court of Appeals affirmed that Taxpayer's purchase of fuel for rental vehicles were purchases for resale and therefore not subject to the gross retail tax, which was imposed on the sales of gasoline at the time of purchase. 457 N.E.2d 246, 250 (Ind. Ct. App. 1983).

Taxpayer also refutes the Department's Information Bulletin 83. Information Bulletin 83, 20140625 Ind. Reg. 045140229NRA (June 2014) states that "Exemptions available to taxpayers under [IC 6-2.5-5](#) (other than the sale for resale exemption under [IC 6-2.5-5-8](#)) are also available to taxpayers for gasoline use tax." Taxpayer states Information Bulletin 83 is inconsistent with the law because the law allows for sale of resale exemption for gasoline use tax; therefore, Information Bulletin 83 is incorrect.

First the Department notes that IC § 6-2.5-3.5-19 states:

- (a) Except as provided in section 22 of this chapter, at the time of purchase or shipment of gasoline from a refiner or terminal operator to a distributor that is not a qualified distributor, the refiner or terminal operator shall collect and the distributor shall pay to the refiner or terminal operator the gasoline use tax in an amount determined under subsection (d).
- (b) At the time of purchase or shipment of gasoline from a qualified distributor to a retail merchant, the qualified distributor shall collect and the retail merchant shall pay to the qualified distributor the gasoline use tax in an amount determined under subsection (d).
- (c) If gasoline is delivered to a retail merchant for resale and the gasoline use tax in the amount determined under subsection (d) has not been paid on the gasoline, the refiner, terminal operator, or qualified distributor making the delivery shall pay to the department the gasoline use tax in an amount determined under subsection (d). For purposes of this chapter, a bulk plant is considered to be a retail merchant, except when the bulk plant is also a qualified distributor.

In addition IC § 6-2.5-3.5-21 states:

- (a) Except as provided in subsection (b), a distributor that pays the gasoline use tax under this chapter shall separately state the amount of tax paid on the invoice the distributor issues to its purchaser or recipient. The purchaser or recipient shall pay to the distributor an amount equal to the gasoline use tax paid.
- (b) A distributor that:
 - (1) pays the gasoline use tax under this chapter;
 - (2) is a retail merchant; and
 - (3) sells gasoline that is exempt from the gasoline use tax, as evidenced by a purchaser's exemption certificate issued by the department;may not require the exempt purchaser to pay the gasoline use taxes paid on the gasoline sold to the exempt purchaser. A distributor that has paid gasoline use taxes and has not been reimbursed because the gasoline is sold to an exempt purchaser may file a claim for a refund. A claim for a refund must be on the form approved by the department and must include all supporting documentation reasonably required by the department. If a distributor files a completed refund claim form that includes all supporting documentation, the department shall authorize the auditor of state to issue a warrant for the refund.

In this instance, while *Hertz* does state that fuel qualifies for the sale for resale exemption, that case came out before the Gasoline Use Tax statute was enacted; the case was published in 1983 and GUT was effective as of July 1, 2014. Thus, the Department cannot rely on the *Hertz* case to support Taxpayer's position. Taxpayer's business is not a business that sells gasoline, it is in the business of rental vehicles. Taxpayer also argues that, if they have to pay GUT, it is unfair to charge sales tax on the empty tank/prepay-for-full-tank fuel charges. Because GUT is not the sales tax, but a separate tax entirely, it is actually within the law for sales tax to be imposed on the fuel charges, because within the definition of "gross retail income," any taxes paid by the merchant (including GUT) passed on to the purchaser are subject to sales tax per [IC 6-2.5-1-5\(a\)\(2\)](#).

In addition, Information Bulletin 83 states that the sale for resale exemption does not apply as long as the GUT has been effective; this has always been the Department stated, published interpretation. GUT replaces the prepaid sales tax on gasoline collected from the retail merchant. To allow the "sale for resale" exemption for a merchant would defeat the purpose of moving the collection responsibility to distributors. Taxpayer has not provided information as to how this transaction is exempt from GUT since the sale for resale exemption is not allowed under GUT. Thus, Taxpayer's protest regarding GUT is denied.

FINDING

Taxpayer's protest is denied.

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