

**Final Order Denying Refund: 04-20200315R
Gross Retail and Use Tax
For the 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 Order Denying Refund.

HOLDING

Metal Recycler was not entitled to claim a refund of sales tax paid on the purchase of two transfer trailers delivered by the out-of-state dealer and accepted by the Metal Recycler in Indiana.

ISSUE

I. Gross Retail and Use Tax - Refund Request.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1(a); IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC §§ 6-2.5-5 et seq.; *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466 (Ind. Tax Ct. 1993); *Scopelito v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Sales Tax Information Bulletin 28S (January 2019); Sales Tax Information Bulletin 28S (March 2017); *New Residents of Kentucky*, <https://revenue.ky.gov/Property/Motor-Vehicles/Pages/Motor-Vehicle-Usage-Tax.aspx>.

Taxpayer argues that it is entitled to a refund of use tax paid on the purchase of two trailers on the ground that it inadvertently paid Indiana tax on vehicles which were subsequently titled in Kentucky.

STATEMENT OF FACTS

Taxpayer is an out-of-state metal recycler, headquartered in Kentucky, which operates facilities in various other states including a facility in Indiana.

In January 2019, Taxpayer purchased two transfer trailers for use in its recycling business. Taxpayer purchased both trailers from a Wisconsin dealer. Taxpayer did not pay Wisconsin sales tax because - according to the receipts - the trailers were sold to "an out of town customer."

The dealer delivered the vehicles to Taxpayer's Indiana facility. Taxpayer subsequently filed a sales tax return with Indiana in February 2019. On that return, Taxpayer paid Indiana approximately \$10,000 in sales tax attributable to the purchase and delivery of the two vehicles.

Taxpayer submitted a GA-110L ("Claim for Refund") dated November 2019 seeking a refund of the \$10,000. The Indiana Department of Revenue ("Department") responded in a letter dated May 2020 denying the refund. The letter explained that "[n]o over payment exist[s]."

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. At the time it filed the protest, Taxpayer also submitted an amended February 2019 Indiana sales tax return explaining that "it now [has] a credit of [\$10,000]."

An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results.

I. Gross Retail and Use Tax - Refund Request.

DISCUSSION

The issue is whether Taxpayer has established it was entitled to a refund on the ground that its purchases of two transfer trailers were exempt from Indiana sales tax.

Taxpayer points out that the two trailers were eventually titled and plated in Kentucky. At the time it did so, it paid Kentucky's "usage tax" ("use") totaling approximately \$10,000. Taxpayer concludes that having paid the Kentucky tax, in February 2019, it is now entitled to a refund of the \$10,000 it paid Indiana.

There are certain points which are apparently undisputed and which the Department will not here contest.

- Taxpayer purchased two transfer trailers from a Wisconsin dealer;
- Taxpayer did not pay the Wisconsin dealer that state's sales tax;
- The Wisconsin dealer delivered the trailers to Taxpayer's Indiana facility and Taxpayer accepted delivery at that location;
- Taxpayer filed a sales tax return remitting the Department sales (or use) tax on the purchase of the vehicles;
- Taxpayer subsequently registered the two trailers with the Kentucky Transportation Cabinet and paid that state's "usage" or use tax.

When a taxpayer challenges taxability in a specific instance, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC §§ 6-2.5-5 et seq. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-1-2; IC § 6-2.5-4-1.

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). 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 functionally equivalent to the sales tax. See *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Id.* at 1048; *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 469 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. IC § 6-2.5-3-2(a). A taxable retail transaction occurs when; (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b), IC § 6-2.5-3-2(a).

Nonetheless, the Department bears in mind a point Taxpayer does not cite, IC § 6-2.5-3-2(e) which states:

Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over tangible personal property, if:

- (1) the property is delivered into Indiana by or for the purchaser of the property;
- (2) the property is delivered in Indiana for the sole purpose of being processed, printed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property; and
- (3) the property is subsequently transported out of state for use solely outside Indiana.

IC § 6-2.5-3-2(e) provides a "temporary storage" use tax exclusion from when the tangible personal property is purchased from an out-of-state vendor, shipped to an Indiana location, but then subsequently "transported out of state for use solely outside Indiana."

However, when Taxpayer paid Indiana the \$10,000, it reported it as *sales* tax due to the Department. Presumably, Taxpayer intended this as a payment of *use* tax because sales tax was not collected by the dealer. It should also be pointed out that it is not known if Taxpayer made "use" of the transport trailers while located in Indiana. Did Taxpayer perform mechanical modifications to the trailers while in Indiana? Did Taxpayer add equipment to the

trailers in order to make them appropriately suitable for Taxpayer's specialized work?

The Department is unable to agree that there is sufficient information to allow Taxpayer to take refuge in the "temporary" use tax exemption.

Indiana also takes into consideration the rate of sales tax charged by the state into which the vehicle is moved and titled. Sales Tax Information Bulletin 28S (January 2019), 20190130 Ind. Reg. 045190039NRA.

Absent a statutory exemption, all sales of motor vehicles and trailers purchased in Indiana are subject to Indiana sales and use tax. This includes sales where the purchaser intends to immediately register, license, and/or title the motor vehicle or trailer for use in another state.

If the vehicle is to be moved and titled in another state or country within thirty (30) days of the sale, Indiana sales tax at the rate imposed by that other state or country may apply. Any such sales tax collected at the rate of the other state must be remitted to the Indiana Department of Revenue, not to the other state's revenue collection agency. Please consult Sales Tax Information Bulletin 84 . . . See *also* Sales Tax Information Bulletin 28S (March 2017), 20170426 Ind. Reg. 045170210NRA

According to this Bulletin, if Taxpayer had known at the time of the Indiana delivery that the trucks would eventually be moved to and titled in Kentucky, Taxpayer would have been able to pay the tax to Indiana but at Kentucky's "six percent motor vehicle usage tax" rate.

Based on what we know are the uncontested facts, Taxpayer bought the two transfer trailers in Wisconsin, accepted delivery in Indiana, made taxable "use" of the vehicles while here, and paid Indiana's seven percent tax on those vehicles.

When Taxpayer titled the two trailers in Kentucky, it should have asked for and received credit for taxes paid in Indiana.

When offering a vehicle for registration for the first time in Kentucky which was registered in another state that levied a tax substantially identical to Motor Vehicle Usage Tax, a credit against the Usage tax equal to the amount of tax paid to the other state will be granted. *New Residents of Kentucky*, <https://revenue.ky.gov/Property/Motor-Vehicles/Pages/Motor-Vehicle-Usage-Tax.aspx>. (Last visited August 5, 2020).

Taxpayer may have multiple remedies, but its remedies are not with Indiana.

As to Taxpayer's protest arguing that it is entitled to receive from Indiana the full amount of tax paid, Taxpayer is wrong, and its protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

August 11, 2020

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