

DEPARTMENT OF STATE REVENUE

04-20200114.LOF; 04-20200117.LOF
04-20200118.LOF; 04-20200119.LOF**Letter of Findings: 04-20200114; 04-20200117; 04-20200118; 04-20200119**
Gross Retail Tax
For the Year 2018

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department agrees with Indiana recreational vehicle dealership that sales of RVs which are delivered outside of Indiana are exempt from Indiana sales tax. Additionally, a sale which occurs in Indiana to a nonresident who later titles or registers the recreational vehicle in a reciprocal state is also exempt from Indiana sales tax. However, a sale of a recreational vehicle, which took place in Indiana to an Indiana resident is not exempt from Indiana sales tax.

ISSUE**I. Gross Retail Tax - Sales of Recreational Vehicles to Non-Residents.**

Authority: IC § 6-2.5-2-1; IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-2.5-13-1; IC § 6-8.1-5-1; *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 2.2-2-1](#).

Taxpayer argues that the Department erred in assessing sales tax on the sale of recreational vehicles to non-residents and delivered outside of Indiana.

II. Gross Retail Tax - Sales of Recreational Vehicles to be Registered in a Reciprocal State.

Authority: IC § 6-2.5-13-1; IC § 6-2.5-5-39; Sales Tax Information Bulletin 72 (Effective July 1, 2017); Sales Tax Information Bulletin 28S (March 2017).

Taxpayer argues that the Department erred in assessing sales tax on the sale of recreational vehicles to purported non-residents who later titled or registered the recreational vehicle in a reciprocal state.

STATEMENT OF FACTS

Taxpayer is an Indiana recreational vehicle ("RV") dealership. During tax year 2018, Taxpayer made four sales in particular for which Taxpayer charged no Indiana sales tax. Two of those sales were made to non-residents and were delivered in Ohio. The other two sales were delivered in Indiana but were taken to reciprocal states where they were registered. Taxpayer treated the sales as tax exempt and did not charge, collect, or remit sales tax on any of these sales. Rather, a Form ST-137RV, Affidavit of Exemption by a Nonresident on the Purchase of a Recreational Vehicle/Cargo Trailer, was filed to support the exemption status. The purpose of the ST-137RV is to provide an Indiana sales tax exemption to out-of-state purchasers who will title their vehicles in certain other states. Upon receipt of the ST-137RV forms, the Indiana Department of Revenue ("Department") reviewed the transactions and issued Taxpayer a proposed assessment of sales tax for each purchase. Taxpayer disagreed with the assessments and filed a timely protest. A telephonic administrative hearing was held and this Letter of Findings results. Additional details will be provided as necessary.

I. Gross Retail Tax - Sales of Recreational Vehicles to Non-Residents.**DISCUSSION**

The first issue is whether Taxpayer has met its statutory burden of establishing that the sales of RVs made to non-resident customers and delivered outside of Indiana were properly exempt from Indiana sales tax.

As a threshold issue, it is Taxpayer's responsibility to establish that the assessment of additional tax is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. 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, fn. 9 (Ind. Tax Ct. 2012).

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); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible person property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana] . . ." IC § 6-2.5-13-1(d)(1). In general, the purchaser "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." IC § 6-2.5-2-1(b).

When a purchaser claims the transaction "is exempt from the state gross retail and use taxes, [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). "A seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail or use tax on that purchase." *Id.* Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

The Department has issued general guidance for sourcing sales of motor vehicles. According to IC § 6-2.5-13-1(d):

- (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).

Both sales at issue here were negotiated over phone or email, but the sales were completed, and delivery took place in Ohio. Taxpayer has provided sufficient documentation to show that the customers were in fact non-residents and that delivery occurred in Ohio both times, at a location approximately sixty miles away from Taxpayer's location. Upon delivery, the purchase agreement, bill of lading, and ST-137RV were signed by the customers indicating acceptance of the respective RVs. The first sale was made to a Michigan resident who filled

out a ST-137RV indicating his intent to register the RV in Michigan within thirty days. The second sale was made to a Mississippi resident who also completed an ST-137RV indicating his intent to register the RV in Mississippi. Because both RVs were delivered outside of Indiana neither sale can be sourced to Indiana under IC § 6-2.5-13-1(d)(1) and neither sale is subject to Indiana sales tax. Taxpayer is sustained regarding these two sales.

FINDINGS

Taxpayer's protest regarding RVs which were delivered to customers outside of Indiana is sustained.

II. Gross Retail Tax - Sale of Recreational Vehicles to be Registered in a Reciprocal State.

DISCUSSION

The remaining two sales were sales which took place in Indiana, but the RVs were registered outside of Indiana. As explained in detail above, Taxpayer bears the burden of proving the proposed assessment wrong under IC § 6-8.1-5-1(c). Because the sales took place in Indiana, the sales are sourced to this state under IC § 6-2.5-13-1(d). However, a sale sourced to Indiana is not automatically subject to Indiana sales tax as an exemption may apply. As it pertains to sales of recreational vehicles, IC § 6-2.5-5-39(c) clarifies:

A transaction involving a cargo trailer or a recreational vehicle is exempt from the state gross retail tax if:

- (1) the purchaser is a nonresident;
- (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
- (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;
- (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; and
- (5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.

Additionally, Sales Tax Information Bulletin 28S (March 2017), states that, for recreational vehicles and trailers:

A full exemption is applicable to the purchase of a recreational vehicle . . . or a cargo trailer by a [nonresident], if the purchaser affirms the purchase will be registered/titled within 30 days in a reciprocal state or country. A reciprocal state is one that allows an exemption to an Indiana resident who purchases an RV or a cargo trailer to be registered/titled in Indiana.

. . .

To claim an exemption for a transaction involving a recreational vehicle or cargo trailer, the purchaser must complete Form ST-137RV. The original signed copy must be mailed to the department within 30 days of delivery. Sales Tax Information Bulletin 28S (March 2017), 20170426 Ind. Reg. 045170210NRA.

Sales Tax Information Bulletin 72 (July 2017) repeats this idea:

Sales of recreational vehicles and cargo trailers by Indiana dealers destined for out-of-state registration are exempt from the Indiana sales tax if the state where the recreational vehicle or cargo trailer will be registered provides a similar exemption for an Indiana resident making a purchase in that state. This exemption also applies to states that do not impose a sales tax. Sales Tax Information Bulletin 72 (July 1, 2017), [20180425-IR-045180188NRA](#).

If the RV is to be transported and titled in a state that does not provide a similar exemption, "the rate at which sales tax is to be imposed and collected on the sale is the rate of the intended destination state or country. However, the dealer and purchaser must complete an ST-108NR to document the collection of sales tax at a rate other than Indiana's 7[percent] rate." *Id.*

The first Indiana sale at issue was made to a customer who intended to title or register the RV in Montana. The Purchase Agreement and the ST-137RV both listed purchase as a Limited Liability Company ("LLC"). The LLC is registered in both Indiana and Montana. The individual who made the purchase was the LLC's president and registered agent in Indiana. This individual indicated that the purchaser was an Indiana resident on the ST-137RV. As stated in IC § 6-2.5-5-39(c), the purchase of an RV is exempt from Indiana sales tax if the purchaser is a *nonresident*, the RV is transported outside of Indiana within thirty days, the RV will be titled or registered outside of Indiana, and the RV will be titled or registered in a reciprocal state. The customer indicated it was an Indiana resident on the ST-137RV. Thus, even though Montana is a reciprocal state, the purchase is not

exempt from Indiana sales tax under IC § 6-2.5-5-39(c).

The second Indiana sale was made to an LLC located in New Mexico. The individual who conducted the purchase was the owner of the LLC. He indicated on the ST-137RV that he was a legal resident of Florida and intended to title or register the RV in Florida. Taxpayer was able to provide evidence that the RV was actually registered in New Mexico, which is a reciprocal state according to Sales Tax Information Bulletin #72 (July 2017). Therefore, this sale is exempt from Indiana sales Tax.

FINDINGS

Taxpayer's protest regarding the RV which was purchased in Indiana, by an Indiana resident and registered outside of Indiana is denied. However, the protest in which the RV was purchased in Indiana and registered in a reciprocal state is sustained.

SUMMARY

As it pertains to Issue I, Taxpayer is sustained regarding sales in which the RVs were delivered outside of Indiana. As for Issue II, Taxpayer is denied for the sale made in Indiana to an Indiana resident. Taxpayer is sustained for the sale of the RV which was registered in a reciprocal state.

December 1, 2020

Posted: 02/24/2021 by Legislative Services Agency
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