

Memorandum of Decision Number: 04-20200439
Sales Tax
For the Tax Year 2020

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

Missouri Resident was not entitled to a "Total Loss Credit" because he purchased a motor vehicle at a dealership's business location in Indiana and took possession of the vehicle in Indiana. The transaction was an Indiana sale subject to Indiana sales tax. Missouri Resident however demonstrated that the sales tax rate on the transaction in question should have been 4.225 percent. As such, he was entitled to a partial refund.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-4-1; IC § 6-2.5-5-24; IC § 6-2.5-13-1; *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *United States v. McFerrin*, 570 F.3d 672 (5th Cir. 2009); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#); Sales Tax Information Bulletin 28S (May 2019); Sales Tax Information Bulletin 72 (June 2019); Sales Tax Information Bulletin 72 (June 2020), Sales Tax Information Bulletin 84 (August 2014). Sales Tax Information Bulletin 84 (July 2020).

Taxpayer protests the refund denial of sales tax which was collected at the time of the sale.

STATEMENT OF FACTS

Taxpayer is an individual currently residing in Missouri. In January 2020, Taxpayer purchased a motor vehicle at an Indiana dealership business location ("Dealership"). Dealership collected sales tax, in the amount of \$1,607.14. The sales tax was calculated based on 5.639 percent of the sale price of that vehicle. Taxpayer took possession of the vehicle at the Dealership's business location in Indiana and drove back to his home in Missouri. Taxpayer subsequently titled and registered the vehicle in Missouri in February 2020.

In May 2020, Taxpayer filed a Form GA-110L, Claim for Refund, requesting a refund of \$1,013.27. Upon initial review, the Indiana Department of Revenue ("Department") denied Taxpayer's refund claim. The Department explained in part:

This was not a trade-in or other discount that can be deducted from the taxable selling price so sales tax was due at the time of purchase. In Indiana, insurance companies are required to include sales tax in the settlement.

Taxpayer protested the refund denial. An informal phone hearing was held. This final determination results. Further facts will be provided, as necessary.

I. Sales Tax - Refund.

DISCUSSION

Taxpayer requested the refund of sales tax paid to Dealership, stating the following:

I purchased a vehicle on 1/24/2020 in Indianapolis. The dealership would not accept my total loss letter from my insurance agency and assess the full amount of sales tax for my state (MO) and county The total amount that I paid in sales tax was \$1,607.14 but the amount [] I should have paid was \$593.87. I am requesting a refund in the amount of \$1,013.27.

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 personal 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). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." IC § 6-2.5-2-1(b). "The retail merchant shall collect the tax as agent for the state." *Id.*

In addition, "Tax credits are a matter of legislative grace" and "are only allowed as clearly provided for by statute, and are narrowly construed." *United States v. McFerrin*, 570 F.3d 672, 675 (5th Cir. 2009) (citing *Stinson Estate v. United States*, 214 F.3d 846, 848 (7th Cir. 2000)). That is, a statute which provides a tax credit or 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 (internal citations omitted).

One example relevant to this case is the change of the Indiana sales tax rate concerning sales of motor vehicles to out-of-state purchasers. That is, beginning July 1, 2014, Indiana sales "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 . . ." IC § 6-2.5-2-3(b). (**Emphasis added**).

Throughout the protest process, referencing the non-notarized Sales Tax Certificate from an insurance company, Taxpayer contended that Dealership or the State of Indiana should have given him the \$17,914 "total loss credit," which is a credit provided under the Missouri law. To support his protest, Taxpayer further offered Form ST-108NR and the non-notarized Sales Tax Certificate.

Upon review, however, the Department is not able to agree. Specifically, in this instance, Taxpayer came to Indiana to purchase the motor vehicle from the Indiana Dealership. Taxpayer accepted the delivery and took possession of the vehicle at the Indiana Dealership in Indiana. As such, the transaction in question occurred in Indiana - was an Indiana sale - subject to Indiana sales tax pursuant to Indiana tax law. The transaction did not qualify for interstate commerce exemption under IC § 6-2.5-5-24(b) and there is no reciprocity between Indiana and Missouri on motor vehicle sales. See also [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#) and Sales Tax Information Bulletin 28S (May 2019), 20190626 Ind. Reg. 045190314NRA. *But cf.* Sales Tax Information Bulletin 72 (June 2019), 20190626 Ind. Reg. 045190315NRA and Sales Tax Information Bulletin 72 (June 2020), 20200729 Ind. Reg. 045200399NRA (discussing that purchases of recreational vehicles and cargo trailers by nonresidents, including Missouri, are exempt from Indiana sales tax if the purchaser's state of registration offers similar treatment to Indiana purchasers of recreational vehicles and cargo trailers).

As mentioned earlier, "tax credits" are a matter of legislative grace and are "only allowed as clearly provided for by statute, and are narrowly construed." *McFerrin*, 570 F.3d at 675. In this instance, IC § 6-2.5-2-3(b) specifically states "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 . . . **is the rate of that state . . .**" (**Emphasis added**). The statutory language of IC § 6-2.5-2-3(b) is plain and clear; the Indiana legislators intended to apply "the tax rate of that state" on qualified motor vehicles and "the tax rate of that state" only. See also Sales Tax Information Bulletin 84 (August 2014), 20140827 Ind. Reg. 045140329NRA and Sales Tax Information Bulletin 84 (July 2020), 20200826 Ind. Reg. 045200440NRA. While applicable Indiana exemptions outlined under [IC 6-2.5-5](#) remain available to out-of-state purchasers, the Indiana legislators did not offer the out-of-state purchasers any statutory exemptions or tax credits provided by their home states. In other words, whether State of Missouri exempts its resident-purchasers from Missouri sales tax or offers a "total loss credit" to its resident-purchasers to reduce the tax is beyond the scope of this protest. Indiana is not precluded from taxing Indiana sales at the Indiana rate. Without the statutory authority, the Department must decline Taxpayer's invitation.

Nonetheless, while Missouri imposes a 4.225 percent sales tax rate at the state level (excluding any locally imposed tax rates), Taxpayer's supporting documentation demonstrated that Dealership erroneously collected the sales tax based on 5.639 percent of the sale price of that vehicle. Therefore, the Department is prepared to agree that Taxpayer was only responsible for the sales tax at 4.225 percent under IC § 6-2.5-2-3(b). As such, the

Department will recompute the rate and refund the overpayment accordingly.

In short, Taxpayer's vehicle purchase was an Indiana retail transaction subject to Indiana sales tax. The Department correctly denied the "total loss credit" because it was not applicable under Indiana law. Pursuant to IC § 6-2.5-2-3(b), Taxpayer demonstrated that his purchase should have been subject to the 4.225 percent of the sale price of that vehicle. As such, the Department will refund the difference.

FINDING

Taxpayer's protest is sustained, in part, and respectfully denied, in part.

February 23, 2021

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