

Final Order Denying Refund: 04-20221039
Indiana Sales Tax
For The Tax Year 2021

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

Arkansas Resident was not entitled to a refund because she 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.

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); *Stinson Estate v. United States*, 214 F.3d 846 (7th Cir. 2000); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#); Sales Tax Information Bulletin 28S (February 2021); Sales Tax Information Bulletin 72 (June 2020); Sales Tax Information Bulletin 72 (February 2021); 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 Arkansas. In October 2021, Taxpayer purchased a motor vehicle at an Indiana dealership business location ("Dealership"). Dealership collected sales tax in the amount of \$817.83. The sales tax was calculated based on 6.5 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 her home in Arkansas. Taxpayer subsequently titled and registered the vehicle in Arkansas in November 2021.

In November 2021, Taxpayer filed a Form GA-110L, Claim for Refund, requesting a refund of \$817.83. Upon initial review, the Indiana Department of Revenue ("Department") denied Taxpayer's refund claim. The Department explained in part:

Per Sales Tax Information Bulletin #84, the state of Indiana may collect sales tax on vehicle purchases up to the destination state's sales tax rate. The dealership charged and collected sales tax at Arkansas' sales tax rate of 6.5[percent], therefore a refund is not due. For further detail, please see IC [§] 6-2.5-2-3 for clarification.

Taxpayer protested the refund denial and requested that the Department make the "Final determination without a hearing." This final determination results based on the supporting documentation submitted by Taxpayer. 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:

PAID ARKANSAS RATE SALES TAX AT THE TIME I PURCHASED A VEHICLE IN INDIANA, WITH THE DEALER'S ASSURANCE THAT THE SALES TAX WOULD BE PAID TO THE STATE OF ARKANSAS. THE SALES TAX WAS NOT REMITTED TO THE STATE OF ARKANSAS, CAUSING ME TO HAVE TO PAY THE SALES TAX AGAIN. I NEED THIS AMOUNT REFUNDED. (Capitalization in original).

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**).

Taxpayer contended that she was entitled to the \$ 817.83 refund paid to Indiana on the ground that according to the Indiana dealer, the sales tax would be paid to Arkansas. In addition to a copy of Form ST-108NR (Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle, Recreational Vehicle, or Cargo Trailer For a Nonresident), Taxpayer offered a copy of "Transaction Receipt," dated November 18, 2021, (L0156538512), to which presumably support her payment to title and register the vehicle in Arkansas.

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 Arkansas on motor vehicle sales. See also [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#) and Sales Tax Information Bulletin 28S (February 2021), 20210331 Ind. Reg. 045210101NRA. *But cf.* Sales Tax Information Bulletin 72 (June 2020), 20200729 Ind. Reg. 045200399NRA and Sales Tax Information Bulletin 72 (February 2021), 20210331 Ind. Reg. 045210102NRA (discussing that purchases of recreational vehicles and cargo trailers by nonresidents 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).

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.

In short, Taxpayer's vehicle purchase was an Indiana retail transaction subject to Indiana sales tax. The Dealership properly collected Indiana sales tax, in the amount of \$817.83 pursuant to the above-referenced Indiana law. Any statement by the Dealer that the tax would be sent to Arkansas was incorrect and the Department is not bound by such a statement by a private business.

FINDING

Taxpayer's protest is respectfully denied.

March 29, 2022

Posted: 06/29/2022 by Legislative Services Agency
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