

**FINAL ORDER DENYING REFUND: 04-20200412
For the 2020 Tax Year**

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

The Department correctly denied a claim for refund of Indiana sales tax when the dealer charged the Indiana sales tax rate instead of charging the Illinois sales tax rate. Individual's refund claim is denied.

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; *City of Kokomo v. Est. of Newton*, 136 N.E.3d 1172, 1177-78 (Ind. Ct. App. 2019); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Hammes v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 84 (July 2020).

Taxpayer protests the Department's denial of a refund.

STATEMENT OF FACTS

Taxpayer is an Illinois resident. Taxpayer purchased a vehicle at an Indiana dealership ("Dealer"). Dealer collected seven percent sales tax on the transaction, which is the sales tax rate of Indiana. Taxpayer states that he registered the vehicle in Illinois. Taxpayer filed a claim requesting a refund from Indiana for the difference between Indiana sales tax (7 percent) and Illinois sales tax (6.25 percent). However, Taxpayer did not file the claim under his name, but rather under the name of an Indiana dealership that sells pre-owned motor vehicles. Taxpayer was employed by this Indiana dealership.

The Indiana Department of Revenue (Department) denied this request, and Taxpayer filed a subsequent protest and requested resolution without a hearing. This Final Order Denying Refund results.

I. Sales Tax - Refund.**DISCUSSION**

Taxpayer protests the Department's denial of his refund claim. In that claim, Taxpayer requested that Indiana refund the 0.75 percent difference between the Indiana sales tax rate and the Illinois sales tax rate. Taxpayer states that because the motor vehicle was registered in Illinois, he should have been charged the Illinois tax rate. Taxpayer did not provide documentation to establish that he registered the vehicle in Illinois under his name, which is the name on the purchase documents. Taxpayer did provide a copy of the Claim for Refund. However, Taxpayer did not list himself as the taxpayer on the Claim for Refund but listed his Indiana employer instead.

As a threshold issue, "when [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision are entitled to deference.

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). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall

collect the tax as agent for the state." *Id.*

Sales of vehicles in Indiana generally are subject to Indiana sales tax unless the transactions are specifically exempt under Indiana law. The sales tax treatment of a vehicle changes when the vehicle is purchased to be immediately transported out of state for use outside of Indiana. IC § 6-2.5-2-3 explains the tax implications of this situation:

(a) As used in this section, "motor vehicle" means a vehicle that would be subject to the vehicle excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana.

(b) Notwithstanding section 2 of this chapter, *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 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 satisfying the requirements of subsection (c).

(c) The department of state revenue shall prescribe the form of the affidavit required by subsection (b). In addition to the certification required by subsection (b), the affidavit must include the following:

(1) The name of the state or country in which the motor vehicle will be titled or registered.

(2) An affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true.

(3) Any other information required by the department of state revenue for the purpose of verifying the information contained in the affidavit.

(d) The department may audit affidavits submitted under this section and make a proposed assessment of the amount of unpaid tax due with respect to any incorrect information submitted in an affidavit required by this section.

(Emphasis added).

Specifically, IC § 6-2.5-2-3 allows purchasers who purchase qualified motor vehicles in Indiana but intend to title and register the vehicles to be used in states other than Indiana (within 30 days after the sale) to pay the sales tax rate of the state for which the vehicles are ultimately titled, registered, and used. The Department's Sales Tax Information Bulletin 84 (July 2020), 20200826 Ind. Reg. 045200440NRA, further explains the computation of the sales tax concerning the qualified Indiana sales.

INTRODUCTION

As a general matter, the sales tax rate imposed on all retail transactions in Indiana is [seven (7) percent]. However, the General Assembly has enacted legislation (SEA 0367-2014) specifically directed toward the sales of vehicles to individuals or entities that intend to title and register the vehicle for use in another state or country. Effective July 1, 2014, the sales tax rate imposed on such sales is the state-level sales tax rate of the state in which the vehicle will be titled and/or registered.

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DEFINITION

The term "motor vehicle" means a vehicle that would be subject to the annual license excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana. This includes cars, motorcycles, and trucks weighing 11,000 pounds or less. This does not include motor homes; trucks weighing greater than 11,000 pounds; or trailers.

DETERMINATION OF THE TAX RATE

Beginning on July 1, 2014, when the purchaser of a motor vehicle intends to both (a) transport that motor vehicle to a destination outside Indiana within 30 days after delivery, and (b) *title and register that motor vehicle for use in another state or country, 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.*

The sales tax rates of the other states are inclusive of only state-level rates. Any locally imposed sales tax rates in the other states are not included in the rates Indiana dealers will be required to collect. Additionally, *the statutory language of IC [§] 6-2.5-2-3 requires the application of the destination state's state-level sales tax rate only to the sale of a motor vehicle that is to be titled and registered for use in another state. Accordingly, the destination state's sales tax rate is the only aspect of that state's laws that will be incorporated by virtue of IC [§] 6-2.5-2-3. The statute does not require the incorporation of other aspects of a state's laws relating to transactions involving vehicles.*
(Emphasis added).

Furthermore, a corporation is a legal entity separate and distinct from its stockholders, individually or collectively considered. *City of Kokomo v. Est. of Newton*, 136 N.E.3d 1172, 1177-78 (Ind. Ct. App. 2019) (quoting *Hammes v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995)).

While Taxpayer purchased the vehicle in Indiana and states that he registered the vehicle in Illinois, he did not provide documentation to establish that he registered the vehicle under his name. Also, Taxpayer provided a copy of the Claim for Refund which listed his Indiana employer instead of himself. Taxpayer did not provide a copy of Indiana sales tax form ST-108NR (State Form number 52873), which dealers use to calculate sales tax for non-residents at their home state rate. This form would have informed Dealer of Taxpayer's intention to take the vehicle to another state and register it there. Dealer would then have applied the destination state's sales tax rate to the transaction. Taking all of these factors into consideration, the Department finds that, Dealership correctly collected Indiana's seven percent sales tax rate.

In conclusion, IC § 6-2.5-2-3 allows those who purchase qualified motor vehicles in Indiana but intend to title and register the vehicles to be used in states other than Indiana (within 30 days after the sale) to pay the sales tax rate of the state for which the vehicles are ultimately titled, registered, and used. Taxpayer has shown no documentation establishing that the motor vehicle was registered under his name in Illinois. Taxpayer is an individual, as provided in *City of Kokomo*, who is distinct from the Indiana dealership. Taxpayer is therefore not entitled to a sales tax refund. Taxpayer has not established that the Department's refund denial was wrong.

FINDING

Taxpayer's protest is denied.

February 20, 2023

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