

Supplemental Memorandum of Decision: 04-20221057
Sales Tax
for the 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 Supplemental Memorandum of Decision.

HOLDING

Out-of-state Individual was entitled to a refund of Indiana sales tax paid on his Indiana purchase of a recreational vehicle; Individual took possession of an RV at Indiana Dealership's Indiana business location, returned to his home state, and titled the vehicle in that state. Individual was entitled to the one percent differential between Indiana's seven-percent sales rate and his home state's six-percent rate.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-8.1-9-1; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-2-5; IC § 6-2.5-13-1; [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 72 (February 2021, Effective July 1, 2020); Sales Tax Information Bulletin 84 (July 2020).

Taxpayer protests the denial of a refund requesting the return of a portion of Indiana sales tax paid to an Indiana recreational vehicle dealer.

STATEMENT OF FACTS

Taxpayer is a Michigan resident who purchased a recreational vehicle ("RV") from an Indiana dealership. Taxpayer paid Indiana's seven percent sales tax of approximately \$4,700 at the time of purchase. Taxpayer returned home to Michigan and took the vehicle with him. Taxpayer registered, titled, and insured the RV in Michigan.

Taxpayer submitted a refund claim requesting the return of approximately \$700 on the ground that the Indiana RV dealer should have charged him sales tax at Michigan's six-percent sales tax rate.

The Indiana Department of Revenue ("Department") denied the refund. Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for his protest. A Final Order Denying Refund ("ODR") was issued June 15, 2022, denying the protest. The Department agreed that the ODR should be reconsidered and this Supplemental Memorandum of Decision results.

I. Sales Tax - Refund.

DISCUSSION

The June 2022 ODR concluded that Taxpayer was not entitled to the requested refund explaining as follows:

Taxpayer purchased and took delivery of an RV in Indiana making it subject to Indiana sales tax; Taxpayer may not claim the 30-day drive-away exemption because Taxpayer transported and titled the vehicle in Michigan which is a non-reciprocal state; Taxpayer is not entitled to deference allowed to out-of-state purchases of cars, trucks (applying the Michigan rate) because Michigan does not allow that same deference to Indiana purchasers of RVs in Michigan.

The issue is whether the ODR was wrongly decided and that the Indiana RV dealer should have collected Indiana's sales tax using Michigan's six-percent sales tax rate. If the RV dealer should have collected Indiana sales tax at the six-percent rate, Taxpayer is entitled to the refund.

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 sale is sourced to Indiana and subject to Indiana sales tax when the transaction is a "retail sale" and the product is received by the purchaser at the business' location in Indiana. IC § 6-2.5-13-1(d)(1). A retail merchant that has a physical presence in Indiana is required to collect the tax as an agent for the State. IC § 6-2.5-2-1(b).

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.

Taxpayer necessarily relies on provisions in Indiana law addressing the Indiana purchase of vehicles by out-of-state residents. Certain of those provisions provide a deferential treatment for certain qualified Indiana motor vehicle sales. Specifically, an out-of-state purchaser who buys a vehicle in Indiana but intends to title and register and use the vehicle in states other than Indiana (within 30 days after the sale) may pay the tax rate of the state for which the vehicle is ultimately titled, registered, and used.

IC § 6-2.5-2-3 requires Indiana vendors to charge out-of-state purchasers Indiana sales tax when it sells vehicles to those out-of-state residents. However, the vendor is authorized to impose the Indiana tax using the destination state's tax rate on purchases of "motor vehicles." However, in this instance, the Taxpayer's Indiana RV purchase falls under IC § 6-2.5-2-5 which governs; (1) the imposition of Indiana sales tax; (2) the Indiana purchase of RVs; (3) purchases by out-of-state residents who transport the RV out-of-state; (4) and purchasers who title or register the RV vehicle in the purchaser's home state. In part, the statute provides:

(d) Notwithstanding section 2 of this chapter, in the case of a transaction that:

(1) is not exempt from taxation under [IC 6-2.5-5-39](#); and

(2) involves a cargo trailer or recreational vehicle that:

(A) is purchased by a:

(i) resident of a nonreciprocal state; or

(ii) resident of a foreign country;

(B) the purchaser intends to:

(i) transport to a destination outside Indiana within thirty (30) days after delivery; and

(ii) title or register for use in the nonreciprocal state or foreign country; and

(C) will not be titled or registered for use in Indiana;

the state gross retail tax rate on the cargo trailer or recreational vehicle is the rate of the nonreciprocal state or foreign country (excluding any locally imposed tax rates) in which the cargo trailer or recreational vehicle will be titled or registered, as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (e). (*Effective July 1, 2020*).

The applicable sales tax rate for Michigan is six percent. Therefore, Taxpayer argued that the Indiana dealership should have charged him Indiana sales tax at the lower Michigan rate and that he is now entitled to a refund of the one-percent differential.

The Department's Sales Tax Information Bulletin 84 (July 2020) 20200826 Ind. Reg. 045200440NRA, explains that the deferential treatment called for in IC § 6-2.5-2-3 "is available for nonresident purchasers of recreational vehicles that will register their vehicles in a nonreciprocal state"

Taxpayer took possession of the RV in Indiana which makes it subject to Indiana's sales tax under IC § 6-2.5-13-1(d)(1). Taxpayer returned home to Michigan taking the vehicle with him and titling the RV in that non-reciprocal state. Sales Tax Information Bulletin 72 (February 2021, Effective July 1, 2020), 20200729 Ind. Reg. 045200399NRA, explains:

Sales to nonresidents of Indiana 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[.]

. . . .

There are eight nonreciprocal states (as well as all foreign countries, including Canada and Mexico) that do not provide an exemption for vehicles to be registered in Indiana. Because of this, purchases of RVs or

trailers 1) made from Indiana dealers and 2) which are to be registered in one of the following states will be required to pay **Indiana sales tax** at the time of purchase: Arizona California Florida Hawaii Massachusetts **Michigan** North Carolina South Carolina. (**Emphasis added**).

Sales Tax Information Bulletin 72 continues:

Beginning on July 1, 2020 (as well as between July 1, 2017, and June 30, 2019; see note below), when the purchaser of a recreational vehicle or cargo trailer intends to both (a) **transport that vehicle or trailer to a destination outside Indiana** within 30 days after delivery, and (b) title and register that vehicle or trailer for use in one of the nonreciprocal states listed above or a foreign country, the **Indiana dealer must charge Indiana sales tax at a special rate**, which is the rate of the intended destination state or country.

Simply put, Taxpayer purchased and took delivery of an RV in Indiana making it subject to Indiana sales tax. Nonetheless, because Taxpayer transported the RV to his home in Michigan and then titled the RV in that state, the dealer should have collected sales tax at the "special rate" provided for under IC § 6-2.5-2-5.

Taxpayer's analysis was correct, and the Department's ODR was incorrect. Taxpayer is entitled to the requested refund.

FINDING

Taxpayer's protest is sustained.

July 8, 2022

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