

Final Order Denying Refund: 04-20221090
Sales/use 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

Taxpayer owes sales tax on a leased vehicle since the primary location of the vehicle is in Indiana.

ISSUE

I. Sales Tax - Leased Vehicle.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-1; IC § 6-2.5-13-1; 50 U.S.C.A. § 4001; *Sullivan v. United States*, 395 U.S. 169 (1969); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Information Bulletin 28L (November 2016).

Taxpayer protests denial of refund regarding sales tax charged on a leased vehicle.

STATEMENT OF FACTS

Taxpayer states that he is an active-duty member of the U.S. military and that he is "a legal resident of Montana" and that he leased a vehicle "while stationed in Minnesota in April 2021." Taxpayer states that he subsequently moved to Indiana in August 2021 and that he updated his "information to have all [of his] mail changed to [his] new residence in Indiana, [Taxpayer] started to get additional sales tax taken out every month" on the leased vehicle.

Taxpayer filed a claim for refund with the Indiana Department of Revenue ("Department"). The Department denied the claim for refund. The Department's letter noted that Taxpayer could file a protest regarding the denial. On or about March 10, 2022, Taxpayer submitted his protest to the Department. Taxpayer filed a protest using the Department's "Protest Submission Form," marking on the form that he was requesting a "Final determination without a hearing." The form states that a final determination without a hearing means that a taxpayer "waives the right to a hearing" and that the Department's written decision will be based upon the written protest and documentation provided by the taxpayer. This written decision results from review of Taxpayer's documentation and the Department's records. Additional facts will be provided as necessary.

I. Sales Tax - Leased Vehicle.

DISCUSSION

As noted, Taxpayer is an active member of the U.S. military. Taxpayer states that he is a resident of Montana and leased a vehicle from Minnesota in 2021. Taxpayer subsequently moved to Indiana in 2021. Taxpayer filed a claim for refund with the Department regarding sales/use tax being charged on his leased vehicle.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. See e.g. *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer states in correspondence to the Department: "I do not pay any state taxes no matter where I am stationed at due to the fact I'm Active Duty [military] Soldier who has a home of record for the state of Montana." Taxpayer's argument can be summarized as follows: (1) he is an active-duty member of the U.S. military; (2) and,

per Taxpayer, a resident of another state; (3) thus he is not required to pay Indiana sales tax on his leased vehicle.

The federal law that Taxpayer appears to be relying on is the Servicemembers Civil Relief Act, 50 U.S.C.A. § 4001 (previously cited as 50 App. U.S.C.A. § 571; also previously cited as 50 App. U.S.C.A. § 574), which states in pertinent part:

(a) Residence or domicile

(1) In general

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

...

(b) Military service compensation.

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

However, there is a United States Supreme Court case, *Sullivan v. United States*, 395 U.S. 169 (1969), regarding military servicemembers and states sales tax. The *Sullivan* case dealt with "whether [section] 514 of the Soldiers' and Sailors' Civil Relief Act prohibits Connecticut from imposing its sales and use taxes on servicemen stationed there who are residents or domiciliaries of other States. The United States instituted this action in federal court against the appropriate Connecticut officials on behalf of the aggrieved servicemen." *Id.* at 170 (internal footnotes omitted). The U.S. Supreme Court held that "the Soldiers' and Sailors' Civil Relief Act *does not exempt servicemen from the sales and use taxes imposed by Connecticut.*" *Id.* at 184 (*Emphasis added*). The U.S. Supreme Court noted:

Section 514 does not relieve servicemen stationed away from home from all taxes of the host State. It was enacted with the much narrower design 'to prevent multiple State taxation of the property.' And the substantial risk of double taxation under multi-state ad valorem property taxes does not exist with respect to sales and use taxes. Like Connecticut, nearly every State which levies such taxes provides a credit for sales or use taxes paid on the transaction to another State.

Id. at 180 (internal footnotes omitted). Thus, under the reasoning of *Sullivan*, Indiana is not precluded from assessing sales tax on Taxpayer's leased vehicle.

Turning to Indiana's sale and use tax laws, 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). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax - called "use tax" - "on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft . . . is required to be titled, licensed, or registered by this state for use in Indiana." IC § 6-2.5-3-2(b). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. *See Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

IC § 6-2.5-13-1(f) provides the statutory rule for leased motor vehicles with recurring monthly payments:

The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g), shall be sourced as follows:

- (1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.
- (2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
(*Emphasis added*)

Sales Tax Information Bulletin 28L (November 2016), 20161228 Ind. Reg. 045160561NRA. provides additional guidance on the nonresident leases and their taxability (bold in the original):

I. RESIDENT VERSUS NONRESIDENT LEASES

Taxability of a lease is NOT based upon residency of the lessee (customer). The determination is based upon the vehicle's or trailer's state of primary property location, per terms of the lease agreement.

A lease is subject to Indiana sales tax if the vehicle is to be primarily located within Indiana. A lease where the vehicle is to be primarily located in another state will be subject to that state's sales/use tax and will not be subject to the Indiana sales tax. The lessor shall collect and remit the appropriate sales tax to the appropriate taxing jurisdiction.

The state sales tax on a **lease** of any motor vehicle or trailer must be in accordance with [IC 6-2.5-13-1](#), General Sourcing Rules. The term "**sourcing**" refers to rules used to determine which state's sales tax is applicable to a transaction. [IC 6-2.5-13-1](#) treats taxation of **lease** income differently than income derived from **sales** of motor vehicles. A lease originating in Indiana is subject to Indiana sales tax if the "primary property location" of the vehicle or trailer is indicated on the lease as being located in Indiana. The determination of which state's tax is to be collected on a lease is different for a periodic lease versus a lease that does not require periodic payments (see below).

Furthermore, Sales Tax Information Bulletin 28L states:

V. NON-INDIANA LEASES

A. The primary property location of a vehicle, per the lease agreement, is used to determine which state's sales/use tax applies to a lease requiring periodic lease payments.

Residency of the lessee (customer) *is not to be used to determine if the lease is subject to Indiana sales tax versus another state's sales/use tax. If the motor vehicle or trailer is primarily located within Indiana, the entire lease shall be subject to Indiana sales tax on all "gross retail income" received by an Indiana lessor at the time of lease origination, regardless of residency of the customer.* The lessor (leasing or finance company) will collect the appropriate state's sales tax on the lease *based upon where the vehicle is to be physically located, which is normally the state where the vehicle or trailer is registered for highway use.* If the primary property location is in another state, no Indiana sales tax will be due.

Example: A customer initiates a new lease from an Indiana dealer. The lessee (customer) intends to register/plate the leased vehicle in their home state, which is not Indiana. The Indiana dealer, acting as an agent for the lessor, is responsible for collection of the applicable state's sales tax. All sales tax in this example is to be collected by the lessor for the state where the vehicle is primarily located, per the lessor's records.

The dealer, acting as an agent for the lessor, must collect the applicable state's sales tax. The dealer shall indicate on the lease agreement the name of the state for which the tax is collected. *If the lessee claims an exemption the exemption must meet the exemption statutes of the state where the vehicle will be located.* The dealer, acting as a leasing agent for the lessor, must follow instructions from the lessor as to applicable tax rates and exemption requirements of a state other than Indiana.
(*Emphasis added; bold in original*)

As Sales Tax Information Bulletin 28L makes clear, the residency of the lessee (in this case, Taxpayer's) is not used to determine if the lease is subject to Indiana sales tax versus another state's sales/use tax. The vehicle's primary property location is used. In the present case (as of August 2021), Taxpayer's vehicle is primarily located within Indiana. Thus, the lease payments are subject to Indiana sales/use tax. For purposes of Indiana sales and use taxes, when Taxpayer moved to Indiana, the primary location of the vehicle also changed to Indiana. As a result, Taxpayer is subject to Indiana sales and use tax on payments made under the lease agreement. Lastly, the Department notes that there does not appear to be any issue of a potential credit for sales/use taxes paid to another state, since Taxpayer was not paying sales tax on the lease payments (as shown by the monthly finance statement provided Taxpayer, which Taxpayer noted has "no sales tax added prior to moving to Indiana[;]" Taxpayer also provided a copy of what appears to be the original lease agreement, with "Sales/Use Tax" noted as

FINDING

Taxpayer's protest is denied.

August 29, 2022

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An [html](#) version of this document.