

Memorandum of Decision: 04-20231263
Sales Tax
For the Years 2022

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 Memorandum of Decision.

HOLDING

Ohio Car Dealer was entitled to a refund of money erroneously paid to the Indiana BMV; Dealer erroneously believed it was required to pay Indiana sales tax on behalf of its Indiana customer when Dealer had previously collected and remitted Ohio sales tax at the time of the vehicle transaction.

ISSUE

I. Gross Retail Tax - Sales Tax Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-9-3; IC § 6-2.5-3-5; Ohio Rev. Code Ann. § 5739.029; *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Sales Tax Information Bulletin 28S (January 2023); Sales Tax Information Bulletin 28S (February 2021).

Ohio Taxpayer argues that it is entitled to a refund of sales tax paid Indiana on behalf of an Indiana customer who purchased a truck from the Ohio Taxpayer dealership.

STATEMENT OF FACTS

Taxpayer is an automobile dealership located in Ohio. Taxpayer sold a truck to an Indiana customer. Taxpayer charged the customer 5.75 percent Ohio sales tax. The amount of Ohio tax was approximately \$4,200. Taxpayer paid the \$4,200 to the Hocking County Ohio title office at the time the vehicle was "titled" in that county.

Taxpayer then proceeded to pay Indiana sales tax to the Indiana Bureau of Motor Vehicles. Taxpayer paid approximately \$5,400 in tax to the Indiana BMV. According to Taxpayer it paid both the \$4,200 and the \$5,400 on behalf of the Indiana customer who bought the truck.

Taxpayer then submitted a GA-110L claim for refund seeking a refund of \$4,200. Taxpayer explained why it believed it was entitled to the refund.

Customer bought a 2022 Ford truck in Ohio from [Taxpayer] we paid sales tax in Ohio for [\$4,200] then paid sales tax to Indiana for [\$5,400].

In a letter dated September 2022, the Indiana Department of Revenue ("Department") denied the refund explaining as follows:

DOR has reviewed the claim and denies the claim in full in the amount of [\$4,200] based upon the reasons below.

[Taxpayer] is a mere conduit for this transaction; therefore, has no legal claim to the tax ultimately borne by the vehicle owner.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. Accompanying the protest, Taxpayer provided a copy of the check sent to and cashed by the Indiana BMV. As explained by Taxpayer, "This 2nd payment resulted in [Taxpayer] overpaying sales tax for this customer by [\$4,200]."

Taxpayer asked the Department to issue a "Final determination without a hearing." After reviewing the documentation provided by Taxpayer and the records available to the Department, this Memorandum of Decision

is issued in response to the protest.

I. Gross Retail Tax - Sales Tax Refund.

DISCUSSION

The issue is whether this Ohio Taxpayer has established that it is entitled to a refund of the Indiana sales tax paid to Indiana on behalf of its Indiana truck customer.

Where, as here, a taxpayer is challenging the taxability of Indiana sales transactions, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

At the outset, it needs to be emphasized that Ohio did not - and does not - forward any portion of the Ohio sales tax it collected on the sale of a truck to an out-of-state - in particular Indiana - customer.

Ohio Rev. Code Ann. § 5739.029(A) provides as follows:

Notwithstanding sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 5741.021, 5741.022, and 5741.023 of the Revised Code, and except as otherwise provided in division (B) of this section, the tax due under this chapter on the sale of a motor vehicle required to be titled under Chapter 4505. of the Revised Code by a motor vehicle dealer to a consumer that is a nonresident of this state shall be the lesser of the amount of tax that would be due under this chapter and Chapter 5741. of the Revised Code if the total combined rate were six per cent, or the amount of tax that would be due to the state in which the consumer titles or registers the motor vehicle or to which the consumer removes the vehicle for use.

(B) No tax is due under this section, any other section of this chapter, or Chapter 5741. of the Revised Code under any of the following circumstances:

- (1)(a) The consumer intends to immediately remove the motor vehicle from this state for use outside this state;
- (b) Upon removal of the motor vehicle from this state, the consumer intends to title or register the vehicle in another state if such titling or registration is required;
- (c) The consumer executes an affidavit as required under division (C) of this section affirming the consumer's intentions under divisions (B)(1)(a) and (b) of this section; and
- (d) The state in which the consumer titles or registers the motor vehicle or to which the consumer removes the vehicle for use provides an exemption under circumstances substantially similar to those described in division (B)(1) of this section.

The amount of sales tax Ohio dealers collect on sales of motor vehicles to out of state residents who remove, title, and register the vehicle in Indiana is the lesser of the 5.75 percent sales tax due to Ohio or the amount of sales tax the nonresident would pay in the state of titling, registration, or use.

However of course, Indiana allows a "credit" for sales tax paid in another state such as Ohio. IC § 6-2.5-3-5 provides:

A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

Sales Tax Information Bulletin 28S (February 2021) 20210331 Ind. Reg. 045210101NRA explains.

If an Indiana resident purchases a vehicle in another state where the vehicle is received by the Indiana resident in that other state, they may be required to pay that state's sales tax. When the vehicle is registered at the Indiana Bureau of Motor Vehicles, the resident is required to pay use tax on any difference in the tax rate of the purchasing state and Indiana. See also Sales Tax Information Bulletin 28S (January 2023), [20230125-IR-045230016NRA](#).

Taxpayer's Indiana customer was entitled to a 5.75 percent (\$4,200) credit representing the Ohio sales tax Taxpayer collected and forwarded to the Hocking County Ohio title office.

Typically, vendors are not entitled to a refund of sales tax erroneously paid by or paid on behalf of a purchaser. IC § 6-2.5-2-1(b) states that the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided by law, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. Pursuant to IC § 6-2.5-2-1(b), the retail merchant is required to collect the tax *as agent for the state*. IC § 6-2.5-9-3 states that a retail merchant has a duty to remit Indiana gross retail tax to the Department, holds those taxes in trust for the State, and is personally liable for the payment of those taxes to the State. Simply put, customers pay sales tax while vendors act as an "agent for the state" in collecting that tax and is required to remit the tax to the Department. In that respect, the analysis contained in the Department's September 2022 was correct.

However, in this case the \$4,200 refund Taxpayer is not sales tax paid on behalf of its customers nor an amount paid by the truck customer. The \$4,200 represents an amount Taxpayer gratuitously paid the Indiana BMV out of its own pocket. Taxpayer is entitled to a refund of \$4,200.

FINDING

Taxpayer's protest is sustained.

March 31, 2023

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