

**Final Order Denying Refund: 04-20221038
For the 2019 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 used the Wisconsin sales tax rate without applying other exemptions or exceptions from another state. Individual's refund claim is denied.

ISSUE**I. Sales Tax - Refund.**

Authority: [IC 6-8.1-3-3.5](#); [IC 4-22-7-7](#); [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 6-8.1-5-1](#); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 84 (July 2020); N.D.C.C. § 57-40.3-02; N.D.C.C. § 57-40.3-04; W.S.A. § 77.52.

Taxpayer protests the Department's denial to refund and remit to North Dakota the Indiana sales tax charged at the time of Taxpayer's purchase of a motor vehicle in Indiana.

STATEMENT OF FACTS

Taxpayer is a disabled U.S. Air Force veteran. Taxpayer purchased a vehicle at an Indiana dealership ("Dealer"). Dealer collected five percent sales tax on the transaction, which is the sales tax rate of Taxpayer's home state of Wisconsin.

Taxpayer then registered the vehicle in North Dakota, using an Air Force base as the address. In North Dakota, resident disabled veterans are not required to pay sales tax on vehicle purchases. However, Indiana has no similar statutory exemption. There is no documentation establishing that Taxpayer or his partner live on the North Dakota Air Force base. Taxpayer was honorably discharged from the Air Force in 2016. The only home address provided on all other documents was a Wisconsin address.

After registering the vehicle in North Dakota, Taxpayer petitioned the North Dakota Department of Transportation for a refund of Motor Vehicle Tax. Taxpayer states that North Dakota informed him that it would require the sales tax collected in Indiana to be sent to North Dakota before a refund could be issued. Taxpayer then filed a claim with the Indiana Department of Revenue for a refund of the Indiana sales tax paid to Dealer at the time of purchase in Indiana. The Indiana Department of Revenue 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 send the Indiana sales tax collected by the Indiana dealership and remitted to the Indiana Department of Revenue to North Dakota. Taxpayer states that then he would file a claim for a refund of that amount of sales tax with North Dakota, where veterans such as himself are exempt from sales tax on the purchase of vehicles.

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 slightly, however, 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-IR-045200440NRA](#) ("Information Bulletin 84") 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).

Wisconsin's sales tax rate is five percent. W.S.A. § 77.52. North Dakota's sales tax is five percent. N.D.C.C. § 57-40.3-02. The Indiana dealership correctly collected five percent sales tax reflecting Wisconsin's rate. A North Dakota statute creates an exemption for resident disabled military members in North Dakota. N.D.C.C. § 57-40.3-04.

Taxpayer is wholly incorrect regarding how Indiana imposes sales tax on the purchase of vehicles by out-of-state residents. Indiana allows those out-of-state residents to purchase a vehicle in Indiana at the sales tax rate of their home state. It is still Indiana sales tax, as provided by [IC 6-2.5-2-1\(b\)](#), just at the rate of their home state. Indiana only allows adjustments to the sales tax it collects when Indiana exemptions, credits, and deductions are available. Taxpayer wants Indiana to send Indiana sales tax collected on an Indiana transaction to North Dakota. Taxpayer refers to no Indiana statute, regulation, or court case that would allow or compel the Department to send Indiana tax properly collected on an Indiana transaction to another state.

Neither has Taxpayer provided documentation from North Dakota establishing that they expect Indiana to send any sales tax. Other than the vehicle registration itself, all available documentation shows Wisconsin as Taxpayer's home state. This is the documentation Dealer used to determine the amount of Indiana sales tax to be collected. Dealer correctly collected Indiana sales tax at the Wisconsin rate and remitted that sales tax to Indiana as provided by [IC 6-2.5-2-1\(b\)](#). While Taxpayer eventually registered the vehicle in North Dakota, that state's sales tax rate is identical to Wisconsin's five percent. As explained above, even if North Dakota did tell Taxpayer that it would require Indiana to send it the Indiana sales tax in question, there is no statute, regulation, or court case that would allow or compel the Department to do so. Additionally, as expressed in Information Bulletin 84, the statutory exemption Taxpayer seeks to use does not exist in Indiana and does not determine the rate of Indiana sales tax owed on a motor vehicle purchase. Taxpayer is therefore not entitled to a sales tax refund.

FINDING

Taxpayer's protest is denied.

December 22, 2022

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