

DEPARTMENT OF STATE REVENUE

04-20221519.MOD

Memorandum of Decision: 04-20221519
Sales Tax
For The Tax Year 2021

NOTICE: [IC 6-8.1-3-3.5](#) and [IC 4-22-7-7](#) require the publication of this document in the Indiana Register. 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. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. 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

Business' purchases of vehicles for resale were tax exempt because business was a registered retail merchant and not a new car dealer selling new motor vehicles.

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

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-4-1](#); [IC 6-2.5-5-8](#); [IC 6-2.5-13-1](#); [IC 6-8.1-9-1](#); [IC 9-32-2-18.3](#); [IC 9-13-2-111](#); *Dept. of State Revenue v Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Dept. of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#).

Taxpayer protests the denial of refund.

STATEMENT OF FACTS

Taxpayer is an Indiana business that mainly installs vehicle wraps. Occasionally, Taxpayer purchases cars with minor mechanical or light body damage. Taxpayer makes the necessary repairs and resells the vehicles.

In 2021, Taxpayer purchased two vehicles from the same out of state auction house - one from a Michigan location and one from an Ohio location. Taxpayer later registered the vehicles with the Indiana Bureau of Motor Vehicles ("BMV"). The BMV charged Taxpayer sales tax on both vehicles.

In November 2021, Taxpayer requested a refund of sales tax. The refund request related to items Taxpayer used to install vehicle wraps and/or repair the cars as well as the sales tax paid on the two vehicles to the BMV. The Indiana Department of Revenue ("Department") denied the majority of the refund request stating that the "equipment, small tools, and consumables" were not used in "manufacturing" and were not tax exempt. The refund request related to sales tax paid on the vehicles was also denied.

Taxpayer protested the denial of the sales tax related to the vehicle purchases. This is the only issue under protest. Taxpayer requested resolution without a hearing; however, the Department spoke with Taxpayer's representative to gather additional information. This Memorandum of Decision results. Additional facts will be provided as necessary.

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

Taxpayer protests the Department's denial of its claim for refund of sales tax paid on two vehicle purchases in 2021. The Department denied the refund stating:

Two purchases as part of the denial are for the purchase of a vehicle from an out of state auction and a BMV invoice. The tax on the auction purchase is not Indiana's and cannot be refunded. The invoice for the BMV does not provide any information other than the amount of tax paid. It is unknown how these would be used or incorporated.

As a threshold issue, a taxpayer is required to provide documentation explaining and supporting his or her

challenge that the Department's position is wrong. "[W]hen [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 of another party.'" *Dept. of State Revenue v Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

[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.

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 shall collect the tax as an agent for the State. [IC 6-2.5-2-1\(b\)](#).

Tax exemptions are strictly construed against the taxpayer. *Dept. of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The taxpayer has the burden of establishing qualification under the terms of the exemption. *Id.*

[IC 6-2.5-5-8\(b\)](#) provides that transactions involving tangible personal property, other than a new motor vehicle, are exempt from the state gross retail tax when acquired for the purpose of resale.

A person is a "new motor vehicle dealer" if he/she sells, offers to sell, or advertises for sale, at least twelve new motor vehicles for sale in a twelve-month period. [IC 9-32-2-18.3\(1\)](#). A "new motor vehicle" is defined as a vehicle (1) that has not been previously titled under [IC 9-17](#) and carries a manufacturer's certificate of origin; or (2) that has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser." [IC 9-13-2-111](#).

[IC 6-2.5-4-1](#) provides guidance on retail merchants and what constitutes "selling at retail." The statute provides, in part,

- (a) A person is a retail merchant making a retail transaction when the person engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of the person's regularly conducted trade or business, the person:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
 - (1) the property is transferred in the same form as when it was acquired;
 - (2) the property is transferred alone or in conjunction with other property or services; or
 - (3) the property is transferred conditionally or otherwise.

...

Id.

Taxpayer explained that per the auction house requirements, he does not qualify as a "car dealer" so he generally pays the sales tax on a purchase and remits a refund request to the Department. Taxpayer claims he has followed this procedure for prior purchases and received a refund.

In 2021, Taxpayer purchased two vehicles from an out of state auction house. In February, Taxpayer's first purchase came from the auction house's Michigan warehouse. For this purchase, Taxpayer was charged and remitted \$633 in sales tax. The sales tax was charged at a rate of six percent of the purchase price which was the sales tax rate for Michigan. When Taxpayer registered the vehicle in Indiana, the BMV charged him an additional one percent sales tax (\$105.50). The additional one percent collected by the BMV is the difference between Michigan's six percent sales tax rate and Indiana's seven percent sales tax rate.

In October 2021, Taxpayer made a second vehicle purchase from the out of state auction house's Ohio location. The sales invoice does not show that sales tax was paid on this purchase. When Taxpayer registered the vehicle in Indiana, the BMV collected sales tax at the Indiana rate of seven percent (\$1,464.75).

Taxpayer is not a "new car dealer" selling "new motor vehicles." Taxpayer does not sell more than twelve cars in a twelve-month period. Further, Taxpayer is not buying and selling "new motor vehicles" as defined under [IC 9-13-2-111](#). Taxpayer is a "retail merchant" and has a Registered Retail Merchant Certificate. As such, Taxpayer is buying tangible personal property for resale purposes in the course of his business. Because the used vehicles were purchased to resell, Taxpayer's purchases should have been tax exempt when he registered the vehicles with the BMV.

However, it should be noted that Taxpayer is not entitled to a refund of the six percent sales tax paid at the time of the sale for the vehicle in Michigan. Contrary to Taxpayer's belief, Michigan does not collect and transfer the sales tax to Indiana. The initial sale was a Michigan-based sale on which the correct Michigan six percent sales tax rate was collected. When Taxpayer registered the vehicle in Indiana, the BMV correctly charged him the one percent sales tax difference between the states for a total sales tax amount paid on the purchase of seven percent - Indiana's sales tax rate. Thus, for this purchase, Taxpayer is only entitled to a refund of the monies paid to Indiana.

Considering the above discussion, Taxpayer is entitled to a refund of Indiana sales tax on both vehicle purchases. For the Michigan-purchased vehicle, Taxpayer should receive a refund of \$105.50, and for the Ohio-purchased vehicle, Taxpayer should receive a refund of \$1,464.75. Thus, Taxpayer will receive a refund for all of the sales tax paid on the purchase of the two vehicles to Indiana, but not a refund of all sales tax paid on the vehicles as he requested in the protest. Taxpayer's protest is partially sustained and partially denied.

FINDING

Taxpayer's protest is partially sustained and partially denied.

December 19, 2022

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