

Final Order Denying Refund: 04-20221161
Sales and Use Tax
For the 2021 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

Taxpayer was properly charged seven percent tax on vehicles purchased in Indiana, but not titled outside of the state within 30 days.

ISSUE

I. Sales and Use Tax - Imposition.

Authority: [IC 6-2.5-1-2](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-3](#); [IC 6-2.5-4-1](#); *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).

Taxpayer protests the assessment of sales tax on its purchase of motor vehicles.

STATEMENT OF FACTS

Taxpayer is a company located in Illinois. In August 2021, Taxpayer purchased two vehicles from a dealership in Indiana. When purchasing these vehicles, Taxpayer signed an affidavit stating that these vehicles were going to be moved to and titled in Illinois. The dealership subsequently charged Taxpayer the Illinois sales tax rate on its purchase. Instead of titling the vehicles in Illinois, Taxpayer titled the vehicles in Georgia in November 2021 and paid Title Ad Valorem Tax to Georgia at that time. Taxpayer proceeded to file a refund request for sales tax paid in Indiana. Upon reviewing this request, the Indiana Department of Revenue ("Department") denied the refund and instead issued a proposed assessment of use tax for the difference between the Illinois sales tax rate paid and the Indiana sales tax rate owed. Taxpayer protested this decision and waived its right to an administrative hearing. This Final Order results from reviewing documents submitted alongside the Taxpayer's protest.

I. Sales and Use Tax - Imposition.

DISCUSSION

Taxpayer claims that it should not be charged Indiana sales tax as it has already paid Georgia tax on the vehicles. As a preliminary matter, "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).

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 personal 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.

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), 20200729 Ind. Reg. 045200398NRA ("Information Bulletin 84") further explains the computation of the sales tax and specifically discusses Georgia as an example.

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.

...

An Indiana dealer will only be required to collect sales tax at the destination state's rate up to Indiana's rate of [seven (7) percent]. Regardless of whether the destination state's or country's rate is greater than [seven (7) percent], the maximum sales tax rate to be imposed on the purchase of a vehicle from an Indiana dealer is [seven (7) percent].

If the destination state does not impose a sales tax, either in general or on purchases of vehicles, then no sales tax is to be collected by the Indiana dealership.

...

- **Example [5]:** Customer, who is a resident of Georgia, comes into Indiana to buy a motor vehicle from a dealership in Indiana. Customer intends to title and register the vehicle for use in Georgia. In Georgia, the state's sales tax is not imposed on purchases of vehicles, but the state does impose an ad valorem tax on such purchases. Because an ad valorem tax is not a sales tax, the Indiana dealership would not be required to collect sales tax at the Georgia ad valorem tax rate. Furthermore, because Georgia's sales tax is not imposed on purchases of motor vehicles, the Indiana dealership would not collect sales tax at any rate (though Customer and the dealership would still have to fill out the ST-108NR).

Taxpayer's affidavit stated that the vehicles would be titled and located in Illinois within thirty days of purchase. Instead, Taxpayer waited more than twice that long to title its vehicles in Georgia. Included in Taxpayer's affidavit is the following language:

If this vehicle is physically located in Indiana, is titled in Indiana, or is not both moved to and titled in the jurisdiction listed above thirty-one (31) days from the date of sale, I will be responsible for any Indiana sales and use tax not remitted at the time of purchase, including any interest and penalty authorized by Indiana law.

Had Taxpayer planned its purchases so the vehicles in question were titled and registered in Georgia within thirty

days of their purchase, no Indiana sales or use tax would have been owed, since Georgia does not impose sales tax on motor vehicle purchases. As it stands, Taxpayer affirmed that it would title the vehicles in Illinois within thirty days, while also signing an affidavit stating that it would be responsible for Indiana sales and use tax if it failed to do so. Given the facts of this case, Taxpayer is liable for Indiana sales and use tax equaling seven percent of the vehicles' price.

FINDING

Taxpayer's refund request is denied.

April 3, 2023

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