

Final Order Denying Refund: 04-20231155
Sales Tax
For The Tax Year 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 Final Order Denying Refund.

HOLDING

Individual was not entitled to a refund of Indiana sales tax on his vehicle purchase because Individual purchased the vehicle in Indiana and hired a transport company to transport the vehicle out of state. The transaction was an Indiana sale subject to Indiana sales tax.

ISSUE

I. Sales Tax - Refund.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-2-3](#); [IC 6-8.1-9-1](#); [IC 6-2.5-13-1](#); *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin #28S (February 2021); Sales Tax Information Bulletin #84.

Taxpayer protests the refund denial of sales tax collected at the time of the sale.

STATEMENT OF FACTS

Taxpayer is a Mississippi resident. In May 2022, Taxpayer purchased a vehicle from an out of state auction house via an auction held in Indianapolis, Indiana. The auction house collected Indiana sales tax at a rate of five percent. Five percent is the sales tax rate for automobile purchases in Mississippi. The day after purchase, the vehicle was shipped to Taxpayer in Mississippi. When Taxpayer titled and registered the vehicle in Mississippi, he was required to pay five percent Mississippi sales tax based on the vehicle purchase price. Taxpayer then requested a refund of the Indiana sales tax paid from the Indiana Department of Revenue ("Department").

The Department denied the refund request stating that pursuant to [IC 6-2.5-2-3](#), the "registered Indiana dealer" correctly collected Indiana sales tax at the rate imposed of the intended destination state as shown on Form ST-108NR. The Department also noted that Taxpayer would need to take a credit for Indiana sales tax paid when he registered the vehicle in Mississippi. Taxpayer protested the refund denial and requested resolution without a hearing; however, for clarification, the Department contacted Taxpayer to gather some additional information. This Final Order Denying Refund results. Additional facts will be provided as necessary.

I. Sales Tax - Refund.

DISCUSSION

Taxpayer claimed a refund of Indiana sales tax he paid on the purchase of a vehicle in Indiana. The Department determined Taxpayer was not entitled to a refund. In its refund denial letter, the Department explained:

Per [IC 6-2.5-2-3](#) if a motor vehicle is purchased from a registered Indiana dealer, the dealer must collect Indiana sales tax. However, when the purchaser of the 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 Indiana sales tax is to be imposed and collected on the sale is the rate of the intended destination state or country as shown on the ST-108NR.

The dealership collected the Indiana sales tax at the Mississippi rate. The customer should have taken the credit for taxes paid in Indiana when the vehicle was registered/titled in Mississippi. Request for Indiana tax refund is denied.

Taxpayer argues that because he is a Mississippi resident and the vehicle was immediately transported to

Mississippi, he should not be required to pay sales tax twice in two different states. Taxpayer opined that paying sales tax twice was a violation of the "United States Commerce code."

[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. *Dep't 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 6-2.5-2-3\(b\)](#) provides:

(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).

Additionally, the Department's Sales Tax Information Bulletin #28S (February 2021), 20210331 Ind. Reg. 045210101NRA, discusses sales of motor vehicles and trailers.

General Application of Sales Tax

Absent a statutory exemption, all sales of motor vehicles and trailers purchased in Indiana are subject to Indiana sales and use tax. **This includes sales where the purchaser intended to immediately register, license, and/or title the motor vehicle or trailer for use in another state.**

If the motor vehicle is to be moved and titled in another state or country within thirty (30) days of the sale, Indiana sales tax at the rate imposed by that other state or country may apply instead of the normal 7[percent] rate. If the other state's sales tax rate applies, Indiana sales tax shall still be collected by the dealer and remitted to the Indiana Department of Revenue.

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IV. INTERSTATE COMMERCE RULES AND SPECIAL TAX RATE

A. Sales Where the Customer Picks Up the Vehicle in Indiana

If the vehicle is to be moved and titled in another state or country within thirty (30) days of the sale, Indiana sales tax at the rate imposed **by that other state or country** may apply. Any such sales tax collected at the rate of the other state must be remitted to the Indiana Department of Revenue, **not** to the other state's revenue collection agency. Please consult Sales Tax Information Bulletin #84 and the department's website for more details.

B. Vehicles Delivered Outside Indiana

A vehicle or trailer sold in **interstate commerce** is not subject to the Indiana sales tax. To qualify as being "sold in interstate commerce," the vehicle or trailer **must be physically delivered, by the selling dealer to a delivery point outside Indiana**. The delivery may be made by the dealer or the dealer may hire a third-party carrier. Terms and the method of delivery must be indicated on the sales invoice. The dealer must document terms of the delivery and must keep a copy of such terms of delivery to substantiate the interstate sale. The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer outside Indiana. If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale. Please also note that delivery into another state for the purpose of tax avoidance is still subject to Indiana sales tax (e.g., delivery is made directly across the border).

Emphasis in original.)

Further, Sales Tax Information Bulletin #84 (July 2020), 20200826 Ind. Reg. 045200440NR, provides:

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 Indiana 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 state are inclusive of only state-level rates. Any locally imposed sales tax rate 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 the 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, such as other states' trade-in rules, caps on tax, and exemptions.

Taxpayer argues he is entitled to a sales tax refund from Indiana because he is a Mississippi resident and paid tax in Mississippi when he titled and registered the car. Taxpayer provided copies of the refund denial letter from the Department, Form GA-110L, Form ST-108NR, Bill of Sale, title and registration documents from the state of Mississippi and related check payment, documents from the auction house related to the vehicle sale, and documents related to the transport of the vehicle by the transport carrier.

Taxpayer's argument that Indiana should not have collected sales tax is mistaken. Per Taxpayer's account and the submitted documentation, the transaction took place at an auction held in Indiana. The sale was an Indiana transaction and subject to Indiana sales tax. The auction house correctly charged a five percent sales tax rate, which is the sales tax rate for Mississippi automobile purchases.

In order to prove a vehicle was sold outside of Indiana and qualifies for exemption, it is important to document the terms of delivery. Letter of Findings 04-20140017 (June 30, 2015), 20150826 Ind. Reg. 045150269NRA (Dealership did not provide adequate documentation to verify that certain vehicles were delivered out-of-state and therefore exempt from sales tax); Final Order Denying Refund 04-20150342R (December 18, 2015)

While the car was immediately transported to Mississippi the day after purchase, the transport company was not hired by the auction house. Per Taxpayer's explanation, the auction house acted as an intermediary, and the language on the transport contract where Taxpayer is designated as the "Consignee" supports this explanation. Additionally, the Bill of Sale does not contain any language referencing transport arranged by the auction house as discussed in Sales Tax Information Bulletin 28S. Finally, Taxpayer's credit card receipt indicates he paid the \$1,300 transport fee directly to the transport company.

Finally, Taxpayer asserts he should not have to pay tax twice on the same vehicle purchase. Taxpayer's complaint with respect to Mississippi's lack of reciprocity with Indiana rests with Mississippi. Indiana has neither control nor authority to address another state's sales tax implementation. It is up to the purchaser's state or country of residence to determine whether that state or country will give a purchaser credit or an exemption for sales tax paid to Indiana when he purchases a vehicle out of state.

In summary, Taxpayer's vehicle purchase was an Indiana retail transaction subject to Indiana sales tax as established under [IC 6-2.5-2-1](#)(a) and [IC 6-2.5-13-1](#)(d)(1). The auction house correctly charged Indiana sales tax at the five percent Mississippi sales tax rate on the vehicle purchase as provided by [IC 6-2.5-2-3](#)(b). Taxpayer has not paid Indiana more than he owed; therefore, Taxpayer is not entitled to a refund from Indiana.

FINDING

Taxpayer's protest is denied.

April 24, 2023

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