

Memorandum of Decision Number 04-20231298
Indiana Gross Retail and Use Tax
For the 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 Memorandum of Decision.

HOLDING

Indiana Resident was entitled to a refund of Indiana use tax assessed at the time Resident registered a vehicle purchased from an Ohio car dealership; Indiana's BMV failed to account for the trade-in value of Resident's car and failed to account for the amount of Ohio sales tax collected by the dealership.

ISSUE

I. Use Tax - Refund of Indiana Use Tax Paid on a Vehicle.

Authority: [IC 6-2.5-3-1](#); [IC 6-2.5-3-2](#); [IC 6-8.1-9-1](#); [IC 6-8.1-9-2](#); *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); *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Sales Tax Information Bulletin 28S (January 2023); Sales Tax Information Bulletin 28S (February 2021).

Taxpayer protests the refund denial of use tax paid when Taxpayer registered his vehicle with the Indiana Bureau of Motor Vehicles.

STATEMENT OF FACTS

Taxpayer is a resident of Indiana who purchased a vehicle from an Ohio dealership. The "cash value" of the car was approximately \$80,000. Taxpayer traded in his previous vehicle. The dealership allowed Taxpayer a trade-in value of approximately \$50,000.

To complete the purchase, Taxpayer paid the Ohio dealership approximately \$30,000. In addition to the trade-in value and the \$30,000, the dealership charged 5.75 percent Ohio sales tax and 1.25 percent county sales tax of approximately \$2,100. (.07 x \$30,000)

Taxpayer returned to Indiana and registered the new vehicle with the Indiana Bureau of Motor Vehicles ("BMV"). The BMV assessed Taxpayer approximately \$4,000 in Indiana use tax. That amount - along with certain other costs - was charged to Taxpayer's credit card.

Taxpayer disagreed with the Indiana use tax assessment and unsuccessfully attempted to obtain a refund from the BMV. The BMV explained that it could only issue refunds that were requested less than 24 hours after the payment was made. Taxpayer then submitted a form GA-110L ("Claim for Refund") to the Indiana Department of Revenue ("Department").

Thereafter, the Department issued a letter dated October 2022 explaining that the Department was unable to "accept your claim for refund form because the following additional information is required. [Taxpayer] needs to provide copies of the Vehicle Purchase Invoice/Bill of Sale and Current Vehicle Title."

In fulfilling the request to provide the information, Taxpayer was instructed to register for and obtain an "INTIME" account. Taxpayer did so. However, the Department then sent another letter again denying the refund. In its letter, the Department explained:

The claim for refund did not include information necessary for the Department to verify the claim. [A] letter was sent to you . . . advising that additional supporting documentation must be received by this office within fourteen (14) days. We did not receive the additional documentation necessary to process the claim.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted by telephone to allow Taxpayer an opportunity to explain the basis for the protest. This Memorandum of Decision results.

I. Use Tax - Refund of Indiana Use Tax Paid on a Vehicle.

DISCUSSION

The issue is whether Taxpayer has established that he is entitled to a refund of Indiana use tax. Taxpayer argues that the BMV was wrong when it charged him Indiana use tax and the Department was wrong when it denied the claim.

[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.

The Department notes that the BMV collected Indiana's "use" tax. The use tax is a complementary excise tax imposed on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." [IC 6-2.5-3-2\(a\)](#). Use means the "exercise of any right or power of ownership over tangible personal property." [IC 6-2.5-3-1\(a\)](#).

In effect and practice, the use tax is functionally equivalent to the sales tax. See *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Where, as here, a taxpayer is challenging the imposition of use tax, 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).

Taxpayer states that the Ohio dealership indicated that it was charging Taxpayer Indiana's seven-percent sales tax and that the \$2,100 would be forwarded to Indiana. The Department here takes the opportunity to point out that Ohio dealership's explanation is **wrong**. The Ohio dealership collected Ohio state and local - not Indiana - sales tax. However, the issue here is whether the BMV should have assessed the amount of Indiana use tax it did.

The Department's Sales Tax Information Bulletin 28S (February 2021), 20210331 Ind. Reg. 045210101NRA, addresses the question raised here by Taxpayer.

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 Ind. Reg. 045230016NRA.

Taxpayer's car purchase falls squarely within circumstances described in the Bulletin. Taxpayer is and was an Indiana resident who purchased a car in another state, the car was "received" by Taxpayer in another state, and Taxpayer was required to pay Ohio and the local seven-percent sales tax.

The Bulletin also explains the way Indiana complimentary use tax is calculated when the car purchase includes the trade-in of another vehicle.

The value of property from a like-kind exchange is deductible from the taxable gross retail income for Indiana sales tax purposes. To be an exempt trade, the vehicle traded-in must be owned and titled in the name of the customer.

Again, Taxpayer's car purchase falls within the circumstances described in the Bulletin. Taxpayer traded in his "owned and titled" vehicle and - similar to Indiana's sales tax - the \$50,000 trade-in value was deducted in calculating the Ohio tax liability.

Simply stated, the BMV got it wrong. Taxpayer owed Indiana use tax on the \$80,000 price it paid to the Ohio dealership for the car minus the \$50,000 trade-in value. In registering the car in Indiana, the BMV should have charged Taxpayer Indiana use tax on what Indiana treats as a \$30,000 retail sale minus Ohio's 5.75 percent sales tax collected at the time of the original purchase.

The Department notes that Taxpayer is not entitled to offset Indiana's use tax with the county sales tax because Indiana law contains no such provision.

The BMV made a mistake when it calculated the Indiana use tax, and the Department received more money than it is entitled to. The Department will recalculate the amount - if any - of use tax owed and issue a refund of any tax collected in excess of the amount owed Indiana.

The Department takes the opportunity to point out that Indiana law contains a provision, [IC 6-8.1-9-2\(h\)](#), requiring Indiana to pay statutory interest on refund claims that are "not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was paid . . ."

FINDING

Taxpayer's protest is sustained.

August 10, 2023

Finding Replaces: New

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