

Memorandum of Decision 04-20231198
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

Ohio Resident was entitled to a refund of sales tax paid on the purchase of a recreational vehicle from an Indiana dealership because the Ohio Resident transported the vehicle to and titled the vehicle in Ohio; contrary to the dealership's assurances, the Indiana sales tax collected was not forwarded to Ohio.

ISSUE

I. Sales and Use Tax - Refund of Indiana Use Tax.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-5-39](#); [IC 6-2.5-13-1](#); [IC 6-8.1-9-1](#); *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); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 72 (April 2023); Sales Tax Information Bulletin 72 (June 2020); Final Order Denying Refund 04-20231511 (October 10, 2023).

Taxpayer argues that he is entitled to a refund of Indiana sales tax paid when Taxpayer purchased a vehicle from an Indiana dealership.

STATEMENT OF FACTS

Taxpayer is an Ohio resident who decided to purchase a recreational vehicle. Taxpayer chose to purchase that vehicle from an Indiana dealership. The purchase transaction was completed within Indiana and Taxpayer took possession of the vehicle in this state. At the time of the sale, the Indiana dealership charged Taxpayer approximately \$1,200 in Indiana sales tax.

Thereafter, Taxpayer returned to Ohio taking along with him the newly purchased recreational vehicle. Taxpayer took the vehicle to the Ohio Bureau of Motor Vehicle ("OBMV") in order to title the recreational vehicle in that state. Taxpayer was informed that he was required to pay 5.75 percent Ohio state sales tax and 1.5 percent county sales tax.

The Indiana dealership informed Taxpayer that he "[had] to Pay Ohio and request refund from Indiana."

The Indiana dealership further explained that "[w]e sell in OH all the time and have always done it this way and have never had any problems with it."

At the dealership's encouragement, Taxpayer then submitted to the Indiana Department of Revenue ("Department") a refund request in the form of a GA-110L. On that form, Taxpayer sought a refund of the \$1,200 in sales tax collected by the Indiana dealer.

The Department responded in a letter dated August 1, 2022. In that letter, the Department explained that it did not have sufficient information justifying a decision refunding the tax. Specifically, the Department explained "[w]e did not receive the additional documentation necessary to process the claim."

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted by telephone. During that conversation, Taxpayer explained the circumstances and the reasons he believed that the Department made a mistake and should have refunded the Indiana sales tax.

This Memorandum of Decision results and is based on the documentation Taxpayer provided and Taxpayer's explanation of both the Indiana and Ohio events.

I. Sales and Use Tax - Refund of Indiana Use Tax.

DISCUSSION

The issue is whether Taxpayer has established that the Department made a mistake when it denied Taxpayer a refund of the Indiana sales tax charged by and collected by the Indiana dealership.

[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's 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).

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

If, as Taxpayer suggests, the Indiana dealership informed Taxpayer that the Indiana dealership was collecting Ohio sales tax and that Indiana would forward that money to Ohio, the dealership demonstrated a serious misunderstanding of Indiana's tax law.

The dealership did get one thing right when the dealership explained to Taxpayer that "[w]e sell in OH all the time and have always done it this way and have never had any problems with it." The dealership is correct. When it sells a vehicle *in* Ohio, it collects and remits Ohio sales tax because those particular sales transactions took place in that state.

Before proceeding, this Memorandum of Decision points out that the vehicle Taxpayer purchased was a 2017 Forest River Sunseeker classified and labeled publicly as a recreational vehicle.

[IC 6-2.5-5-39](#)(c) provides an Indiana drive-out exemption for recreational vehicles purchased by an out-of-state resident who intends to transport and title the recreational vehicle to a reciprocal state.

A transaction involving a cargo trailer or a recreational **vehicle is exempt from the state gross retail tax** if:

- (1) the purchaser is a nonresident;
- (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
- (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;
- (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; and
- (5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana. **(Emphasis added).**

Sales Tax Information Bulletin 72 (June 2020), 20200729 Ind. Reg. 045200399NRA, "Sales Tax Exemption for Nonresident Purchasers of Recreational Vehicles and Cargo Trailers," provides the specifics:

Sales to nonresidents of Indiana of recreational vehicles and cargo trailers by Indiana dealers destined for out-of-state registration are exempt from the Indiana sales tax if the state where the recreational vehicle or cargo trailer will be registered provides a similar exemption for an Indiana resident making a purchase in that state. This exemption also applies to states that do not impose a sales tax. The jurisdictions below provide a drive-out exemption, provide reciprocity, or have no sales tax. See *also* Sales Tax Information Bulletin 72

The Bulletin indicates that Ohio is one of the states which "provide[s] a drive-out exemption, provide reciprocity, or have no sales tax."

Indiana requires that the buyer must document the circumstances as follows:

[W]hen an Indiana dealership sells a recreational vehicle or cargo trailer to a customer who intends to title and register the vehicle or trailer for use in one of the jurisdictions to which Section IV applies, the dealership and customer must complete Form ST-108NR, available online on the department's website at in.gov/dor/tax-forms/sales-tax-forms/. The dealership must keep a copy of each completed ST-108NR on file to document the buyer's information and the amount of tax collected for each transaction. *Id.*

Taxpayer is a resident of the state of Ohio, purchased the Forest River Sunseeker in Indiana, paid Indiana sales tax to the Indiana dealer, returned the vehicle to his Ohio residence, completed the Form ST-108NR, and titled the vehicle in Ohio.

At least to the extent of Taxpayer's narrative, the dealer's advice was somewhat muddled. The Department does not send sales tax receipts to other states. The Department has addressed this precise issue repeatedly and quotes this explanation from an issued, but not yet published decision.

At the outset, the Department takes this opportunity to point out that Indiana sales tax collected on a transaction conducted in Indiana is not forwarded to other state authorities. Illinois merchants collect Illinois sales tax on transactions conducted in Illinois, and Indiana merchants collect Indiana sales on transactions conducted in Indiana. **Any** vehicle dealership's representation to the contrary is wrong. Final Order Denying Refund 04-20231511 (October 10, 2023) (**emphasis in original**).

Nonetheless, out-of-state Taxpayer has established that, under [IC 6-2.5-5-39\(c\)](#), it is entitled to a refund of sales tax paid on the purchase of a recreational vehicle from an Indiana dealer but transported back and titled in Taxpayer's out-of-state residence.

FINDING

Taxpayer's protest is sustained.

October 23, 2023

Finding Replaces: New

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