

Final Order Denying Refund 04-20231251
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 Final Order Denying Refund.

HOLDING

Neither Indiana Transport Company nor its Owner/Operator were entitled to a refund of Indiana use tax paid when Transport Company's vehicle was titled in the state of Indiana.

ISSUE

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

Authority: [IC 6-2.5-3-1](#); [IC 6-2.5-3-2](#); [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); *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Use Tax for Individual Taxpayers*, <https://tax.illinois.gov/content>.

Taxpayer argues that it is entitled to a refund of Indiana use tax paid when Taxpayer titled the vehicle in Indiana.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the medical transportation business. Taxpayer purchased a sports utility vehicle ("SUV") from a Minnesota dealership. Taxpayer's original explanation was that the purchase price was financed by a business located in Kentucky.

Taxpayer arranged to have the SUV transported to its Indiana location. Taxpayer titled the SUV in Indiana with the Indiana Bureau of Motor Vehicle (BMV). The BMV charged Taxpayer Indiana's seven-percent use tax. The amount of Indiana tax was approximately \$2,200.

Some four months later, Taxpayer retitled the SUV in Illinois. The Illinois Department of Revenue charged Owner/Operator the Illinois tax. The Owner/Operator paid the Illinois tax because ownership of the SUV had been changed from Taxpayer to Owner/Operator.

Taxpayer (not Owner/Operator) then submitted to the Department a refund request in the form of a GA-110L. On that form, Taxpayer sought a refund of the \$2,200 in use tax paid the Indiana BMV.

In a letter dated September 2022, the Department denied the refund explaining as follows.

Taxpayer has provided information on 2 separate vehicles when registering at Indiana BMV. The documents showing the vehicle in Illinois has a different customer name. A change in owner would be a separate transaction. [N]o proof of purchase is provided showing date of original purchase nor is there any proof of residency at time of purchase or registration.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. The protest form indicated that Taxpayer sought a "[f]inal determination without a hearing."

This Final Order Denying Refund is based on Taxpayer's explanation, the documents Taxpayer submitted, information available to the Department, and on a follow-up email exchange with Taxpayer's Owner/Operator.

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

DISCUSSION

The issue is whether Taxpayer has established that the Indiana BMV made a mistake in charging Taxpayer use tax when Taxpayer titled the SUV in this state.

The Department here explains that three different entities are party to this protest. "Taxpayer" is the Indiana transport business which bought the SUV; "Owner/Operator" is the individual who operates and owns the Indiana business; "new partnership" is the Illinois transport company Owner/Operator intended and expected to open in that state.

[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\(a\)](#).

However, in effect and practice, the use tax is functionally equivalent to the sales tax. See *Rhoads 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 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).

Regardless of whether or not the BMV made a mistake charging Taxpayer's owner Indiana use tax, the Department points out Illinois allows a credit for tax paid in another state.

[Illinois] allow[s] credit for taxes properly due and paid to other states up to the amount owed to Illinois. However, if you pay tax to another state at less than the Illinois Use Tax rates, you must pay Illinois the difference. *Illinois Use Tax for Individual Taxpayers*, <https://tax.illinois.gov/content>. (Last visited September 30, 2023).

For clarity's sakes and regardless of the name on the title, the Department notes that Taxpayer's and Owner/Operator's vehicle are one-and-the-same as reflected in the SUV's vehicle identification number. In that respect, the Department's September 2022 refund denial letter was wrong when it explained that there were "2 separate vehicles" at issue. However, Taxpayer's business name was on the Minnesota dealer's purchase invoice, the Kentucky financing company's "bill of sale," and the Indiana title. As such, the supporting documents demonstrated that the SUV was purchased by and titled under Taxpayer, the Indiana company. At some point between the time the SUV was titled in Indiana and the time the vehicle was retitled in Illinois, the SUV's owner's name was changed to the Taxpayer's Owner/Operator's individual name.

The Illinois titling information indicates that Taxpayer (the business) had sold the vehicle to Taxpayer's Owner/Operator.

Taxpayer explains the circumstances. Although Taxpayer's name was on the Minnesota dealer invoice, it was the Owner/Operator individual who was the actual purchaser.

[The vehicle] was supposed to be leased to my partnership business in [Illinois]. In order to register the vehicle in Illinois in the new business name for medical plates needed, I had to [first] title and register it in Indiana from the purchase from the dealer, which I was told by an Indiana BMV representative, then once I titled it into [Taxpayer] I needed to take it to Illinois so I can register and get the plates with the lease agreement to [Illinois partnership business].

Not every detail and incident require explanation in this decision. Taxpayer first indicated the vehicle was bought in Minnesota but later explained the SUV was bought in Kentucky. The documentation provided is contradictory

on the Kentucky/Minnesota issue. However, the distinction is ultimately irrelevant to the tax question here at issue.

Instead, the only issue is "whether Taxpayer has established that the Indiana BMV made a mistake in charging Taxpayer use tax." The answer to that question is "no." Taxpayer (not the Owner/Operator) bought the SUV in another state and titled the SUV in Indiana. At that incidence of ownership, the Taxpayer was required to pay Indiana's use tax. Whether the Owner/Operator may have received bad advice or may have misunderstood correct advice is irrelevant here.

If Taxpayer or the Owner/Operator have any remedy, that remedy lies with Illinois. Despite the somewhat ambiguous change in the SUV's ownership, Taxpayer may or may not be entitled to a refund of some or all of the tax paid to Illinois; that is a question for the Illinois Department of Revenue to answer.

FINDING

Taxpayer's protest is respectfully denied.

October 17, 2023

Finding Replaces: New

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