

December 27, 2011

OFFICIAL OPINION 2011-8

The Honorable Johnny Nugent
Indiana State Senate
200 W. Washington St.
Indianapolis, IN 46204

RE: Sales tax collection obligations in relation to out-of-state purchasers

Dear Senator Nugent:

You have requested from this office an opinion on the following question: What is the responsibility of a licensed Indiana retail merchant to collect Indiana sales tax on a sale where the purchaser is a resident of another state and where the product will be used in the purchaser's home state? You have also asked what tax collection duties an Indiana retailer has when he or she transports the property to another state and consummates the sale outside Indiana.

BRIEF ANSWER

Registered Indiana retail merchants are not required to charge sales tax to out of state residents as long as that person does not have a physical address or a billing address in Indiana and the transaction did not physically take place in the state. Also, when a retailer transports his or her product outside Indiana and consummates sales outside the state, the retailer neither collects Indiana sales tax nor remits it. The retailer, however, will be subject to the other state's sales tax scheme. It may be required to register with that state and collect and remit that state's sales tax.

ANALYSIS

The state gross retail tax is a sales tax on "retail transactions made in Indiana." Ind. Code § 6-2.5-2-1. The person buying the property in the transaction is liable for the tax. *Id.* The retail merchant who is selling the property collects the tax as an "agent for the state." *Id.* "A person is a retail merchant making a retail transaction" when he purchases and transfers property "in the ordinary course of his regularly conducted trade or business." Ind. Code § 6-2.5-4-1(b). Retail merchants who make retail transactions in Indiana are required to register with the Indiana Department of State Revenue (IDR). Ind. Code § 6-2.5-8-1.

Registered Indiana retail merchants are required to collect sales tax on "retail transactions made in Indiana." Ind. Code § 6-2.5-2-1 (a). A "retail transaction [is] made in Indiana" after tangible personal property is sold for consideration by an Indiana retail merchant and the property is received by a person who, at the time of the transfer, is physically located within Indiana. Ind. Code §§ 6-2.5-1-2; 6-2.5-4-1(b)(1),(2); and 6-2.5-13-1; *see also* IDR Letter of Findings 08-0079 (Ind. Dep't of State Revenue Aug. 4, 2008) (holding that out-of-state vendor who physically entered Indiana and sold and delivered goods to Indiana residents was liable for collection of Indiana sales tax).

More specifically, Indiana Code § 6-2.5-13-1 provides general sourcing rules for determining when Indiana sales tax should be collected. *See* Ind. Code § 6-2.5-13-1. *See also* IDR Commissioner’s Directive #24 (July 2004). *Cf. generally* Ind. Code § 6-2.5-12 (sourcing rules for non-mobile telecommunication services).¹ Those rules can be summed up using a few examples. If an Ohio resident travels to Indiana and buys a clock from an Indiana retail merchant, the merchant is required to collect the sales tax. Additionally, if an Ohio resident travels to Indiana to purchase the clock from an Indiana retail merchant and then asks for the clock to be shipped back to Ohio, the merchant is also required to collect the sales tax. If, however, the Ohio resident called an Indiana retail merchant to place the order and asked that the clock to be sent to him or her in Ohio, the merchant is not required to collect sales tax unless the buyer’s billing address is in Indiana.

If an Indiana retailer transports his or her inventory to another state and consummates sales outside Indiana, the retailer is not required to collect or remit Indiana sales tax. Pursuant to Indiana Code § 6-2.5-13-1(d)(2), “[w]hen the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser’s donee, designated as such by the purchaser) occurs” The Indiana retailer selling inventory in another state will be subject to that state’s sales- and use-tax scheme. The retailer will likely be required to register to do business in the other state, acquire the other state’s equivalent of a retailer merchant’s certificate, and collect and remit the other state’s sales tax. *See e.g.* Ohio Rev. Code Ann. § 5741.17 (2011) (requiring the registration of out-of-state sellers who have a substantial nexus to Ohio). If the retailer does not comply with these requirements, it could be subject to various civil and criminal penalties imposed by the other state.

¹ The general sourcing rules do not apply to the sale of telecommunications services or the following if they do not qualify as transportation equipment: watercraft; modular homes; manufactured homes; mobile homes; motor vehicles; trailers; semi-trailers; and aircraft. *See also* IDR Information Bulletin #72 (discussing the sales tax exemption for RVs and cargo trailers).

CONCLUSION

Registered Indiana retail merchants are required to collect sales tax on “all retail transactions made in Indiana.” IDR determines whether a transaction occurred in Indiana based on the physical location of the purchaser at the time of the transaction. Therefore, a retail merchant is not required to charge sales tax to an out-of-state resident as long as that person does not have a physical address or a billing address in Indiana and the transaction did not physically take place in Indiana. Additionally, retailers that transport products outside Indiana and consummate sales outside the state are not required to collect Indiana sales tax but are subject to the other state’s sales tax requirements.

Sincerely,

Gregory F. Zoeller
Indiana Attorney General

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