

**Final Order Denying Refund: 04-20210050**  
**Gross Retail (Sales) Tax and Use Tax**  
**For the 2016 and 2017 Tax Years**

**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**

Indiana Company was not entitled to the refund of sales tax paid on its purchases from an Indiana vendor. Indiana Company's purchases - including (1) telematics devices and accessories, (2) setup and activation fee concerning the telematics devices, and (3) monthly service for those devices (asset with engines and asset using battery powered devices) - were Indiana retail transactions subject to Indiana sales/use tax. As such, the tax was properly paid at the time of the retail transactions.

**ISSUE**

**I. Sales and Use Tax – Refund.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-1-5; IC § 6-2.5-1-14; IC § 6-2.5-1-14.5; IC § 6-2.5-1-24; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-2.5-4-17; IC § 6-2.5-13-1; IC § 6-8.1-9-1; *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466 (Ind. Tax. Ct. 1993); [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-14](#); [45 IAC 2.2-5 et.seq.](#); [45 IAC 15-9-2](#); General Tax Information Bulletin 100 (December 2019); Verizon Connect, *What is Telematics*, <https://www.verizonconnect.com/resources/article/what-is-telematics/>; Gauge, <https://gaugesmart.com/>.

Taxpayer, headquartered in Indiana, protests the denial of its claim for refund of the sales tax it paid on various purchases to an Indiana vendor.

**STATEMENT OF FACTS**

Taxpayer, headquartered in Indiana, is doing business in Indiana and outside of Indiana. To conduct its business, Taxpayer purchased a fleet of vehicles, including but not limited to, trucks, vans, and construction equipment, such as excavators. To manage its fleet used in conducting its business throughout the United States, Taxpayer subsequently contracted with an Indiana vendor to install telematics devices with embedded telematics computer software systems or applications in all vehicles and construction equipment. Thereafter, Taxpayer's employees manage its fleet, namely those vehicles and construction equipment, by accessing the Indiana vendor's website for reports generated by the Indiana vendor's computer software programs or applications based on real-time as well as historical data collected from those vehicles and construction equipment. Taxpayer at its Indiana headquarters obtains and uses the reports, which includes asset tracking, maintenance, usage, driving history, incident, and payroll, etc. to carry out its day-to-day business operations.

The Indiana vendor itemizes its monthly invoices to Taxpayer and collects taxes on sales of (1) telematics devices and accessories, (2) "[s]et up and [a]ctivation fee" concerning the telematics devices, and (3) monthly service for those devices (asset with engines and asset using battery powered devices). Nonetheless, the Indiana vendor does not collect tax on its installation labor, also a separately stated line item.

In December 2020, Taxpayer filed a Form GA-110L, requesting a refund of sales tax paid during 2016 and 2017. The Indiana Department of Revenue ("Department") reviewed the refund request and denied the refund claim in full.

Taxpayer protested the refund denial. A phone hearing was held. Throughout the protest process, the Department

repeatedly requested that Taxpayer provide verifiable vehicle registrations for its fleet, the contract with its Indiana vendor, and contemporaneous communication records for out-of-state installation, but Taxpayer declined to do so. This Final Order Denying Refund results based on verifiable documents submitted, publicly verifiable information, and information within the protest file.

## I. Sales and Use Tax – Refund.

### DISCUSSION

The Department reviewed and denied Taxpayer's refund claim in full. First, the Department determined that Taxpayer's refund claim for 2016 was not timely. As to Taxpayer's refund claim for 2017, the Department in a letter, dated April 26, 2021, in relevant part, explained:

Several attempts have been made requesting additional documentation to support the claim for refund. As of this date the documentation submitted does not support the claim for refund.

Taxpayer disagreed, claiming that it was entitled to the refund of tax paid on (1) telematics devices and accessories, (2) "[s]et up and [a]ctivation fee" concerning the telematics devices, and (3) monthly service fees for those devices (asset with engines and asset using battery powered devices). Taxpayer asserted that it purchased "non-taxable services, activation fees, and GPS devices that were installed on vehicles and equipment located outside of Indiana." Therefore, the issue is whether Taxpayer provides sufficient documents to demonstrate and establish that it was entitled to the full refund of tax paid to its Indiana vender during 2016 and 2017.

#### A. Taxpayer's Refund Claim for 2016.

The Department denied Taxpayer's 2016 refund claim on the ground that Taxpayer's 2016 refund claim was not timely.

According to Indiana law, 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 within three (3) years after the later of (1) the due date of the return or (2) the date of payment pursuant to IC § 6-8.1-9-1(a). [45 IAC 15-9-2](#) outlines the general requirements to claim the refund. See General Tax Information Bulletin 100 (December 2019), 20200401 Ind. Reg. 045200136NRA.

Taxpayer, in this instance, protested the denial of its 2016 refund claim. However, Taxpayer did not provide any documents to support that its 2016 refund claim was timely. As such, Taxpayer's protest is denied in this regard.

#### B. Taxpayer's Refund Claim for 2017.

Taxpayer claimed that it was entitled to the full refund for tax paid during 2017 because it purchased "non-taxable services, activation fees, and GPS devices that were installed on vehicles and equipment located outside of Indiana." The Department denied Taxpayer's 2017 claim in full on the ground that "the documentation submitted does not support the claim for refund." The Department determined that the transactions in question were Indiana retail transactions subject to Indiana sales and use tax.

In general, 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). Also, a "retail sale . . . of a product," is an Indiana retail transaction and therefore subject to Indiana sales tax "where receipt by the purchaser [in Indiana] . . . occurs, including the location indicated by instructions for delivery to the purchaser [in Indiana] . . . known to the seller." IC § 6-2.5-13-1(d)(2). Alternatively, "the sale is sourced to the location [in Indiana] indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business . . . ." IC § 6-2.5-13-1(d)(3).

Further, a "[r]etail transaction" is "a transaction of a retail merchant that constitutes selling at retail as described in IC [§] 6-2.5-4-1 [or] . . . in any other section of [IC 6-2.5-4](#)." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). IC § 6-2.5-1-27 further defines that "[t]angible personal property' means personal property that . . . is in any other manner perceptible to the senses . . . [which] includes . . . **prewritten computer software.**" (Emphasis added). "Computer software' means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task." IC § 6-2.5-1-14. "Computer software maintenance contract' means a contract that obligates a person to provide a customer with

future updates or upgrades of computer software." IC § 6-2.5-1-14.5. **"A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software."** IC § 6-2.5-4-17 (emphasis added). The retail merchant shall collect the tax as agent for the state. IC § 6-2.5-2-1(b). The purchaser "who acquires property in a retail transaction is liable for the tax on the transaction and . . . shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.*

Under IC § 6-2.5-1-5(a)(2017), "gross retail income" is defined as follows:

[T]he **total amount of consideration**, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) **charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;**
- (4) delivery charges; or
- (5) consideration received by the seller from a third party if:
  - (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
  - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
  - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
  - (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage charges that are not separately stated on the invoice, bill of sale, or similar document, handling, crating, and packing. Delivery charges do not include postage charges that are separately stated on the invoice, bill of sale, or similar document.

**(Emphasis added).**

The Indiana use tax, on the other hand, is imposed on a person's storage, use, or consumption of tangible personal property, including prewritten computer software, 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); *see also* IC § 6-2.5-1-24 and IC § 6-2.5-1-27. "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is generally, but not always, functionally equivalent to the sales tax. *See Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Rhoades*, 774 N.E.2d at 1048; *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 468-69 (Ind. Tax. Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. *Rhoades*, 774 N.E.2d at 1050. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. IC § 6-2.5-3-2(a); *USAir, Inc.*, 623 N.E.2d at 468-69. A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. *See* IC § 6-2.5-1-2; IC § 6-2.5-4-1(b) and (c); IC § 6-2.5-3-2(a).

Accordingly, all purchases of tangible personal property are taxable unless specifically exempted under Indiana law. *See* [45 IAC 2.2-5](#) *et seq.* An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). *See also* [45 IAC 2.2-3-14](#)(1). There are some tax exemptions available outlined in [IC 6-2.5-5](#) which are generally applicable to both sales tax and use tax. *See* [45 IAC 2.2-3-14](#)(2). However, one noteworthy exemption - "temporary storage" exemption under use tax - is not available under sales tax.

A statute which provides a tax exemption is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). When a taxpayer challenges the taxability, 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). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). 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." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Taxpayer, in this instance, claimed that it was entitled to the full refund because it purchased "non-taxable services, activation fees, and GPS devices that were installed on vehicles and equipment located outside of Indiana." Taxpayer provided copies of invoices, three lease agreements for its out-of-state locations, an Excel summary of its vehicle fleet, three screen shots of Indiana vendor's website, and an employee's affidavit to support its protest.

Throughout the claim review process and the protest process, the Department repeatedly requested that Taxpayer provide verifiable vehicle registrations for its fleet, the contracts with its Indiana vendor, and contemporaneous communication records for out-of-state installation, but Taxpayer declined to do so, arguing that the requested documents were irrelevant to its refund claim.

The Department, however, is not able to agree. In this instance, upon review, the Indiana vendor sold, and Taxpayer purchased, various Indiana vendor-installed telematics devices, accessories, as well as Indiana vendor's on-going telematics solutions. Taxpayer's documents showed that the Indiana vendor invoiced Taxpayer and collected tax for the following items:

- (1) various "Verizon Asset Tracking Device[s]" and accessories (such as harness assembly, snap in mount, etc.),
- (2) "Set up and Activation Fee" for each device, and
- (3) "Monthly Service-Verizon" fee for each device, including (i) asset with engines and (ii) asset using battery powered devices.

Taxpayer's documentation and publicly verifiable information further demonstrated that the Indiana vendor in question provides telematics solutions that contain "telecommunications, a branch of technology including phone lines and cables, and informatics such as computer systems" including application programs and on-going software maintenance services. Verizon Connect, *What is Telematics*, <https://www.verizonconnect.com/resources/article/what-is-telematics/> (last visited September 7, 2021); see also Gauge, <https://gaugesmart.com/>. Taxpayer argued that it was entitled to the refund on all three above. As such, this final determination addresses Taxpayer's protest, as follows:

### **1. Tax on various "Verizon Asset Tracking Device[s]" and accessories.**

Taxpayer first pointed to its employee's affidavit, its Excel summary, and the "Ship To" column on the invoices, arguing that it was entitled to the full refund of tax paid on these telematics devices and accessories it purchased. Taxpayer asserted that the Indiana vendor "would coordinate with [Taxpayer] for the installation of [] devices at an out-of-state location."

Upon review, however, Taxpayer's reliance of its supporting documentation was mistaken. In this case, both Taxpayer and the Indiana vendor are Indiana businesses. The invoices at issue showed that the Indiana vendor clearly relied on the business address provided by Taxpayer and specifically "Bill[ed] To" Taxpayer's headquarter in Indiana, not the "Ship To." The "Ship To" column on those invoices were either blank, empty, or non-specific location such as "Indiana," "Michigan," or "Southern Region." The Department repeatedly requested that Taxpayer provide additional verifiable documentation, such as a properly executed written contract, but Taxpayer declined to do so. Thus, in the absence of other verifiable supporting documentation to the contrary, these transactions were Indiana sales under IC § 6-2.5-13-1.

In short, based on the verifiable supporting documentation, the transactions were Indiana sales subject to Indiana sales tax. The Indiana vendor properly collected tax on the transactions at issue. Taxpayer's protest is denied.

## 2. Tax on "Set up and Activation Fee" for each device.

Taxpayer next claimed that it was entitled to the full refund of "Set up and Activation Fee" for the telematics devices it purchased.

Upon review, however, the Department is not able to agree. As mentioned earlier, "gross retail income" includes "charges by the seller for any services necessary to complete the sale, other than delivery and installation charges." IC § 6-2.5-1-5(a)(3). Taxpayer's documents and the publicly verifiable information demonstrated that the Indiana vendor is in the business of selling telematics solutions. Therefore, to satisfy the needs of its customers, the Indiana vendor is required to set up and activate the telematics devices to ensure they connect to the Indiana vendor's computer network and function as expected as part of its sale of telematics solutions. That is, the Indiana vendor's setup and activation were required and necessary to complete the sale of its telematics solutions in this case. As such, the fees were "gross retail income" subject to tax pursuant to IC § 6-2.5-1-5(a)(3).

In short, based on the verifiable supporting documentation, the transactions were Indiana sales subject to Indiana sales tax. The Indiana vendor properly collected tax on the transactions at issue. Taxpayer's protest is denied.

## 3. Tax on "Monthly Service-Verizon" Fee for Each Device, including Asset with Engines and Asset using Battery Powered Devices.

Taxpayer argued that it purchased "non-taxable services" and was entitled to the full refund of "Monthly Service-Verizon" fee for each device, including (i) asset with engines and (ii) asset using battery powered devices. Taxpayer also argued that the Indiana vendor is not in the business of providing "telecommunication service" because "telecommunication service does not include data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information."

Upon review, however, the Department is not able to agree. "A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software." IC § 6-2.5-4-17. As mentioned earlier, publicly verifiable information and Taxpayer's documentation showed that the Indiana vendor sells telematics solutions, which contain "telecommunications, a branch of technology including phone lines and cables, and **informatics such as computer systems**" including application programs and on-going software maintenance services (**emphasis added**). In other words, Taxpayer here purchased the telematics solutions, which include *computer systems*, from the Indiana vendor. To accurately capture and compile the real-time and historical data from those telematics devices, the Indiana vendor thus must periodically provide updates and upgrades concerning Taxpayer's telematics devices, namely, the "asset with engines and asset using battery powered devices." As such, the Indiana vendor has entered into the "computer software maintenance contract to provide future updates or upgrades to computer software." The Indiana vendor in turn applies the updated or upgraded computer software programs and applications -as part of the *computer systems* - to render the data analysis and generate various reports for Taxpayer. In other words, without on-going computer software maintenance, e.g., periodical upgrades and updates of computer software programs and applications, Taxpayer's telematics devices will not function properly, and the vendor could not perform its data analysis and ancillary services to meet its customer needs, such as Taxpayer's needs. Therefore, the Indiana vendor is a retail merchant making a retail transaction pursuant to IC § 6-2.5-4-17. Taxpayer as an Indiana purchaser is thus responsible for paying the tax as a separately stated line item on the invoices at issue. IC § 6-2.5-2-1(b). Whether the Indiana vendor is in the business of providing "telecommunication service" is beyond the scope of this protest and has no effect on the underlying transaction's taxable status.

In short, based on the verifiable documentation, the transactions were Indiana sales subject to Indiana sales tax. The Indiana vendor properly collected tax on the transactions at issue. Taxpayer's protest is denied.

## FINDING

Based on the reasons above, Taxpayer's protest of the Department's refund denial is respectfully denied.

September 13, 2021

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An [html](#) version of this document.