

Memorandum of Decision: 04-20211062
Sales Tax
For The Tax Year 2021

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

Individual was entitled to a partial refund of Indiana sales tax paid on the value of a purchase which included a like-kind exchange. The Department correctly applied a special tax rate of three percent for the sale of a vehicle moved to and registered in North Carolina.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-2.5-1-5; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-13-1; IC § 6-8.1-9-1; [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 28S (July 2020); Sales Tax Information Bulletin 84 (July 2020) N.C. Gen. Stat. § 105-187.3; N.C. Gen. Stat. § 105-187.4

Taxpayer protests the denied refund of sales tax collected at the time of the sale.

STATEMENT OF FACTS

Taxpayer is an individual residing in North Carolina. In April 2021, Taxpayer purchased a vehicle from a dealership in Indiana ("Dealership"). Dealership collected Indiana sales tax and completed Form ST-108NR. The sales tax was calculated at three percent of the sale price of the vehicle, which is the highway use tax rate for North Carolina. Taxpayer took possession of the vehicle at the Dealership in Indiana and drove the car to North Carolina.

When Taxpayer titled and registered the vehicle in North Carolina, he was required to pay highway use tax to the North Carolina Division of Motor Vehicles ("NC DMV") for titling the vehicle in the state. After paying the highway use tax to NC DMV, Taxpayer filed a claim for refund requesting the Indiana Department of Revenue ("Department") refund the full amount of Indiana sales tax collected by the Dealership.

The Department denied the refund request, stating Taxpayer had no basis for the refund because the Dealership correctly charged Indiana sales tax at the North Carolina tax rate. Taxpayer protested the refund denial and waived his right to an administrative hearing. This Memorandum of Decision results. Further facts will be provided as necessary.

I. Sales Tax - Refund.

DISCUSSION

Taxpayer filed a claim for refund of Indiana sales tax paid on the purchase of a car from an Indiana dealer. The Department determined Taxpayer was not entitled to a refund. In its refund denial letter, the Department explained that:

An Indiana dealer should collect sales tax at the destination state's rate up to Indiana's rate . . . Indiana dealer correctly collected Sales Tax. For more information please consult Sales Tax Information Bulletin #84.

Taxpayer argues that he is entitled to a full refund because North Carolina does not have a sales tax on vehicles. Taxpayer also notes that the Dealership charged the Taxpayer tax on the entire cost of the vehicle, whereas the highway use tax is on the cost of a vehicle less the value of any trade in allowance.

IC § 6-8.1-9-1(a) affords taxpayers 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 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 location in Indiana. IC § 6-2.5-13-1(d)(1). A retail merchant with a physical presence in Indiana shall collect tax as an agent for the State. IC § 6-2.5-2-1(b).

The sale of motor vehicles in Indiana to purchasers located out-of-state is taxed at a special rate. IC § 6-2.5-2-3. Sales Tax Information Bulletin 84 (July 2020), 20200826 Ind. Reg. 045200440NRA explains how this rate is determined:

III. DETERMINATION OF THE SPECIAL TAX RATE

Beginning on July 1, 2014, when the purchaser of a motor vehicle intends to both a) transport that motor vehicle to a destination outside Indiana within 30 days after delivery, and (b) title and register that motor vehicle for use in another state or country, the rate at which Indiana sales tax is to be imposed and collected on the sale is the rate of the intended destination state or country.

The sales tax rates of the other states are inclusive of only state-level rates. Any locally imposed sales tax rates in the other states are not included in the rates Indiana dealers will be required to collect. Additionally, the statutory language of [IC 6-2.5-2-3](#) requires the application of the destination state's state-level sales tax rate only to the sale of a motor vehicle that is to be titled and registered for use in another state. Accordingly, *the destination state's sales tax rate is the only aspect of that state's laws that will be incorporated by virtue of [IC 6-2.5-2-3](#). The statute does not require the incorporation of other aspects of a state's laws relating to transactions involving vehicles, such as other states' trade-in rules, caps on tax, and exemptions. (Emphasis added).*

Taxpayer argues that North Carolina does not charge sales tax on the sale of vehicles and that he should therefore owe no sales tax in Indiana; however, North Carolina does charge the highway use tax, which imposes a three percent tax on the retail value of a vehicle upon its sale. See N.C. Gen. Stat. § 105-187.3. This tax is collected by car dealerships in North Carolina upon the sale of a vehicle and remitted to the state thereafter. N.C. Gen. Stat. § 105-187.4. Because this tax is the equivalent of a sales tax, in effect and in operation, the semantic difference is irrelevant. Black's Law Dictionary 1761 (11th ed. 2019) (defining "sales tax" as a tax imposed on the sale of goods, usually measured as a percentage of their price, for which the seller typically has the statutory duty to collect). The Dealership correctly collected and remitted sales tax at a three percent rate.

Taxpayer also claims that the Dealership incorrectly collected tax on the entire purchase price of his vehicle. While Taxpayer notes that the highway use tax contains an exclusion for trade-in vehicles, Sales Tax Information Bulletin 84 clearly states that the sales tax rate is the only aspect Indiana incorporates from North Carolina law. However, Indiana law also excludes income for the value of like-kind exchanges from sales tax. See IC § 6-2.5-1-5. Sales Tax Information Bulletin 28S (July 2020), [20210331-IR-045210101NRA](#) explains how like-kind exchanges operate for motor vehicles:

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. Any debt owed on the traded-in vehicle is not treated as consideration for purposes of determining gross retail income. Further, if the value of a traded-in vehicle is in excess of the purchased vehicle, the consideration for the purchased vehicle is treated as zero. **(Emphasis in original).**

As part of his protest submission, Taxpayer provided a Vehicle Buyer's Order, which shows the trade-in of a similar vehicle included as part of the transaction. The Order shows a payoff, or the amount of debt owed by Taxpayer on the traded-in vehicle, and a trade-in allowance to reduce the overall purchase price. The allowance was greater than the payoff, meaning that Taxpayer had equity in the vehicle and the like-kind exchange reduced the sales price. Contrary to the Buyer's Order, the ST-108NR shows no trade-in allowance, meaning Taxpayer wrongly paid tax on the equity value in his like-kind exchange. Taxpayer is therefore due a refund of three percent of the difference between his trade allowance and the payoff. Indiana sales tax on the remaining amount of the sale was correctly collected at the North Carolina rate and no further refund is due on that amount.

FINDING

Taxpayer's protest is sustained to the extent Taxpayer paid tax on the value of his like-kind exchange after accounting for the remaining debt on the vehicle.

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