

Final Order Denying Refund: 04-20221219
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 Final Order Denying Refund.

HOLDING

Individual was not entitled to a refund of Indiana sales tax on his vehicle purchase because Individual purchased the vehicle and took possession of the vehicle at the Indiana Dealership's business location in Indiana. The transaction was an Indiana sale subject to Indiana sales tax.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-8.1-9-1; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-13-1; *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin #28S (February 2021); Sales Tax Information Bulletin #84 (July 2020); Retail Council of Canada, <https://www.retailcouncil.org/resources/quick-facts/sales-tax-rates-by-province/#:~:text=There%20are%20three%20types%20of,for%20each%20province%20and%20territory.&text=As%20of%20July%201%2C%202019,from%208%25%20to%207%25.&text=As%20of%20July%201%2C%202016,from%2013%25%20to%2015%25.>

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

STATEMENT OF FACTS

Taxpayer is a resident of Canada. On October 1, 2021, Taxpayer purchased a vehicle from a dealership in Indiana ("Dealership"). Dealership collected Indiana sales tax at a rate of seven percent. Taxpayer took possession of the vehicle at the Dealership in Indiana and began the return drive to Canada. Along the way, the vehicle broke down twice, the second time along the Wisconsin-Minnesota border. Taxpayer engaged a transport service to transport the vehicle the final distance. The transport receipt indicates the vehicle was picked up on October 15, 2021, and taken to Manitoba, Canada.

To bring the vehicle into Canada, Taxpayer was required to engage a brokerage firm and pay a Customs Excise Tax, Canadian Federal Goods and Services Tax ("GST"), a Customs Brokerage Service Fee, a Disbursement Fee, and a "Tax on Services" fee. Once the vehicle arrived in Manitoba, Taxpayer was also required to pay the "Manitoba Provincial Sales Tax" ("PST") to register the vehicle. After paying the taxes in Canada, Taxpayer filed a claim for refund requesting the full amount of sales tax paid in Indiana be refunded.

The Indiana Department of Revenue ("Department") denied the request stating that pursuant to IC § 6-2.5-2-3, the Dealership correctly charged Taxpayer seven percent sales tax, which was equal to the PST rate charged by Manitoba. Taxpayer protested the refund denial and requested resolution without a hearing. This Final Order Denying Refund results. Additional facts will be provided as necessary.

I. Sales Tax - Refund.

DISCUSSION

The Department determined Taxpayer was not entitled to a refund. In its refund denial letter, the Department explained:

Per [IC 6-2.5-2-3](#), the state gross retail tax rate on a motor vehicle that a purchaser intends to: (1) transport to a destination outside Indiana within thirty (30) days after delivery; and (2) title or register for use in another

state or country; is the rate of that state or country (excluding any locally imposed tax rates).

At the time of the purchase, the dealership charged 7[percent] Sales Tax, which is equal to the Provincial Sales Tax (PST) Rate of Manitoba, on the price of the vehicle.

Taxpayer argues that because he is a Canadian citizen and not an Indiana resident and the vehicle was "imported into Canada," he should not be charged sales tax in Indiana.

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' 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).

Tax exemptions are strictly construed against the taxpayer. *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The taxpayer has the burden of establishing qualification under the terms of the exemption. *Id.* IC § 6-2.5-2-3(b) provides:

(b) Notwithstanding section 2 of this chapter, the state gross retail tax rate on a motor vehicle that a purchaser intends to:

- (1) transport to a destination outside Indiana within thirty (30) days after delivery; and
- (2) title or register for use in another state or country;

is the rate of that state or country (excluding any locally imposed tax rates) as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (c).

Additionally, the Department's Sales Tax Information Bulletin #28S (February 2021), 20210331 Ind. Reg. 045210101NRA, discusses sales of motor vehicles and trailers.

General Application of Sales Tax

Absent a statutory exemption, all sales of motor vehicles and trailers purchased in Indiana are subject to Indiana sales and use tax. **This includes sales where the purchaser intended to immediately register, license, and/or title the motor vehicle or trailer for use in another state.**

If the motor vehicle is to be moved and titled in another state or country within thirty (30) days of the sale, Indiana sales tax at the rate imposed by that other state or country may apply instead of the normal 7[percent] rate. If the other state's sales tax rate applies, Indiana sales tax shall still be collected by the dealer and remitted to the Indiana Department of Revenue.

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IV. INTERSTATE COMMERCE RULES AND SPECIAL TAX RATE

A. Sales Where the Customer Picks Up the Vehicle in Indiana

If the vehicle is to be moved and titled in another state or country within thirty (30) days of the sale, Indiana sales tax at the rate imposed **by that other state or country** may apply. Any such sales tax collected at the rate of the other state must be remitted to the Indiana Department of Revenue, **not** to the other state's revenue collection agency. Please consult Sales Tax Information Bulletin #84 and the department's website for more details.

B. Vehicles Delivered Outside Indiana

A vehicle or trailer sold in **interstate commerce** is not subject to the Indiana sales tax. To qualify as being "sold in interstate commerce," the vehicle or trailer **must be physically delivered, by the selling dealer to a delivery point outside Indiana**. The delivery may be made by the dealer, or the dealer may hire a third-party carrier. Terms and the method of delivery must be indicated on the sales invoice. The dealer must document terms of the delivery and must keep a copy of such terms of delivery to substantiate the interstate sale. *The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical*

possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer outside Indiana. If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale. Please also note that delivery into another state for the purpose of tax avoidance is still subject to Indiana sales tax (e.g., delivery is made directly across the border). **(Emphasis in original.)** *(Emphasis added.)*

Further, Sales Tax Information Bulletin #84 (July 2020), 20200826 Ind. Reg. 045200440NR, provides:

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 state are inclusive of only state-level rates. Any locally imposed sales tax rate 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 the 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.

Taxpayer argues he is entitled to a sales tax refund from Indiana because he is a Canadian resident and paid tax in Canada. Related to the refund request, Taxpayer provided copies of Form ST-108, Bill of Sale from Dealership, documents related to the transfer of title between previous owner and dealership(s), receipt from brokerage firm showing GST paid in Canada, Bill of Lading for transport company, and receipt from Manitoba showing PST paid when vehicle was registered.

Taxpayer's argument that Indiana should not have collected sales tax is mistaken. Per Taxpayer's account and the submitted documentation, the transaction took place at the Dealership located in Indiana. Taxpayer took possession of the vehicle at the Dealership's Indiana location. Taxpayer then drove the vehicle through various states, including Wisconsin, where he twice had car troubles. The second time the vehicle stopped running was on the Wisconsin-Minnesota border. At that time, Taxpayer hired a transport company to move the car from Minnesota to Canada.

The transaction began and concluded in Indiana when Taxpayer took possession of the vehicle at the Dealership's Indiana location. When Taxpayer left the Dealership's location, the transaction was complete. Because Taxpayer was immediately moving and titling the vehicle in Canada, he was subject to Indiana sales tax at the same rate imposed in his home province of Manitoba, Canada.

Manitoba, Canada imposes a seven percent GST along with a five percent PST for a total tax rate of twelve percent. Retail Council of Canada, <https://www.retailcouncil.org/resources/quick-facts/sales-tax-rates-by-province/#:~:text=There%20are%20three%20types%20of,for%20each%20province%20and%20territory.&text=As%20of%20July%201%2C%202019,from%208%25%20to%207%25.&text=As%20of%20July%201%2C%202016,from%2013%25%20to%2015%25> (last visited August 22, 2022). The GST is akin to Indiana sales tax and imposed at an identical rate. Thus, since the seven percent GST rate is the same as Indiana's seven percent sale tax rate, the Dealership correctly collected Indiana sales tax at a rate of seven percent.

Additionally, Taxpayer's journey to get the vehicle from Indiana to Canada involved the use of a transport company in the final leg of travel. Because Taxpayer had already taken possession of the vehicle at Dealership's Indiana location and the transaction was completed in Indiana, the interstate commerce exemption discussed in Sales Tax Information Bulletin #28S is not applicable. The transaction was already completed, and Taxpayer was the party hiring the transport company.

Finally, Taxpayer asserts he should not have to pay tax twice on the same vehicle purchase. Taxpayer's complaint with respect to Canada's lack of reciprocity with Indiana rests with Canada. Indiana has neither control nor authority to address that matter. It is up to the purchaser's state or country of residence to determine whether that state or country will give a purchaser credit or an exemption for sales tax paid to Indiana when he purchases a vehicle out of state.

In summary, Taxpayer's vehicle purchase was an Indiana retail transaction subject to Indiana sales tax. The Dealership correctly charged Indiana sales tax at the seven percent Manitoba rate on the vehicle purchase. Taxpayer has not paid Indiana more than he owed; therefore, Taxpayer is not entitled to a refund from Indiana.

FINDING

Taxpayer's protest is denied.

September 1, 2022

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