DEPARTMENT OF STATE REVENUE

04-20221281.LOF

Letter of Findings: 04-20221281
Use Tax
For The Tax Year 2021

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. 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. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The sale and reacquisition by an individual of her vehicle constituted two separate transactions and thus use tax was properly imposed on the second transaction.

ISSUE

I. Use Tax - Vehicle Acquisition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-1; IC § 6-2.5-2-3; IC § 6-2.5-3-6; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoade v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Indiana Dept. of State Revenue v. Belterra Resort Indiana, LLC*, 935 N.E.2d 174 (Ind. 2010); 45 IAC 2.2-3-5; 45 IAC 2.2-3-22.

Taxpayer protests the proposed assessment of use tax regarding a vehicle.

STATEMENT OF FACTS

Taxpayer, as part of a new job, sold her vehicle to her new employer. After a week or so working at the new employer, Taxpayer decided she would return to her old job and left the new employer. Prior to her leaving her new employment, the new employer titled the vehicle in its name. When Taxpayer went to the Indiana Bureau of Motor Vehicles ("BMV") she was charged sales tax on the vehicle. Taxpayer filed (and received) a Claim for Refund with the Indiana Department of Revenue ("Department") for the sales tax paid to the BMV for the vehicle. After the refund was issued, the Department then issued a Notice of Proposed Assessment for use tax for the vehicle. Taxpayer then filed a protest with the Department. Additional facts will be provided as necessary.

I. Use Tax - Vehicle Acquisition.

DISCUSSION

In her protest letter to the Department, Taxpayer states the facts of the case as follows:

> I sent in a Claim for Refund form into the Indiana Department of Revenue for a refund on the sales tax I paid on [a] vehicle [in] 2021, to get my car titled back in my name. I have owned the [vehicle] for years prior to it being purchased by a company, [referred to by the fictive name "Company E" for confidentiality purposes within this Finding] that hired me last year. Part of the employment package was a company vehicle. They purchased my vehicle on Oct. 4. By the following week, I decided that I would be returning to my former employer . . . and I resigned from [Company E] on Oct. 14, 2021. I did not cash the check that [Company E] gave me, see attached check #[] nor did I drive the vehicle during that duration.

As a threshold issue, under IC § 6-8.1-5-1(c), it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *See e.g. Indiana Dept. of State Revenue v. Rent-A-Center East, Inc*., 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Turning to Indiana's sale and use tax laws, 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). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax - called use tax - "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). The use tax is functionally equivalent to the sales tax. *See Rhoade v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002). . Regarding motor vehicles, IC § 6-2.5-2-3 states:

> (a) As used in this section, "motor vehicle" means a vehicle that would be subject to the vehicle excise tax imposed under IC 6-6-5 if the vehicle were to be used in Indiana.
> (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).
> (c) The department of state revenue shall prescribe the form of the affidavit required by subsection (b). In addition to the certification required by subsection (b), the affidavit must include the following:
> (1) The name of the state or country in which the motor vehicle will be titled or registered.
> (2) An affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true.
> (3) Any other information required by the department of state revenue for the purpose of verifying the information contained in the affidavit.
> (d) The department may audit affidavits submitted under this section and make a proposed assessment of the amount of unpaid tax due with respect to any incorrect information submitted in an affidavit required by this section.

As noted *supra*, Taxpayer states that in early October of 2021 she started a new job. Taxpayer's new employer, Company E, purchased her old vehicle from her for her to use as a company vehicle (Company E stated in an e-mail provided by Taxpayer: "If you want, we can purchase your vehicle from you, making it a company-owned vehicle for your use through its life-cycle at which point we would purchase a new vehicle."). Taxpayer states that she filled out the various paperwork for Company E to purchase her vehicle. From what Taxpayer stated at the hearing, the titling of her vehicle to Company E was done on or about the day she started at Company E. After working at Company E for approximately a week, Taxpayer decided that the job was not for her, and she left Company E's employment. Taxpayer stated that she did not deposit/cash the check that Company E gave her in exchange for Company E taking ownership of her vehicle.

As for re-titling the vehicle, Taxpayer states that Company E sent back the vehicle's title. When she went to the BMV, she paid the registration fees and sales tax. When she attempted to explain the facts of her situation and that she did not believe she owed sales tax, the BMV told her that she could seek a refund from the Department. Taxpayer stated at the hearing that she filed (and received) a Claim for Refund with the Department. After Taxpayer received the sales tax refund, the Department then issued a Notice of Proposed Assessment for use tax for the vehicle. Taxpayer then filed a protest with the Department.

The Indiana Supreme Court case of *Indiana Dept. of State Revenue v. Belterra Resort Indiana, LLC*, 935 N.E.2d 174 (Ind. 2010) (opinion modified on reh'g sub nom. *Indiana Dep't of Revenue v. Belterra Resort Indiana, LLC*, 942 N.E.2d 796 (Ind. 2011)) is edifying on this issue. *Belterra* involved the following facts:

> Belterra Resort Indiana, LLC ("Belterra") is a Nevada corporation that owns and operates a hotel and riverboat casino in Switzerland County. Pinnacle Entertainment Inc. ("Pinnacle"), a Delaware corporation, is Belterra's parent company. Pinnacle contracted with Alabama Shipyard, Inc. of Mobile, Alabama to purchase and construct the Miss Belterra riverboat in September 1999, at the cost of $34,689,719.00. *See* Supp.App. at 28, 32. Alabama Shipyard then conveyed title and possession of the completed riverboat to Pinnacle on July 24, 2000. Pinnacle paid no Alabama sales tax on this transaction. The following day, Pinnacle transferred title and possession of the riverboat to Belterra while in international waters off the Gulf of Mexico. Thereafter the riverboat headed to its ultimate destination in Indiana. Pinnacle owned a 97[percent] interest in Belterra at the time of the transfer. Pinnacle subsequently acquired the remaining 3[percent] interest in Belterra in August of 2001.

Beltera, 935 N.E.2d at 176. The Indiana Supreme Court also stated:

> At stake in this case is whether the transfer of the riverboat from the parent company to its subsidiary corporation was a "retail transaction" within the meaning of Indiana Code section 6-2.5-3-2(a). The statute provides in pertinent part "[a]n excise tax, known as the use tax, is imposed on the ... use ... of tangible personal property in Indiana if the property was acquired in a retail transaction." *Id.* Belterra contends it is not subject to Indiana's use tax because the riverboat was not acquired in a retail transaction. And this is so, according to Belterra, because no consideration was given in exchange for the riverboat. *See* I.C. § 6-2.5-4-1(b)(2) (providing in relevant part "[a] person is engaged in selling at retail when ... he ... transfers that property to another person for consideration"). Rather, Belterra argues that transfer of the riverboat was made as a capital contribution with no consideration given.

Id. at 177.

The Court in *Belterra* further stated, "The issue in this case is whether the transfer of the riverboat from Pinnacle to Belterra was done without either side receiving consideration." *Id*. at 178. The Court noted:

> [T]he concept of consideration evolved from the law of contracts. *Monarch Beverage Co. v. Ind. Dep't of State Revenue,* 589 N.E.2d 1209, 1212 (Ind. Tax Ct.1992). **And in order to have a legally binding contract there must be generally an offer, acceptance, and consideration**. *Id.* "To constitute consideration, there must be a benefit accruing to the promisor or a detriment to the promisee." *Paint Shuttle, Inc. v. Cont'l Cas. Co.,* 733 N.E.2d 513, 523 (Ind.Ct.App.2000) (quoting *A & S Corp. v. Midwest Commerce Banking Co.,* 525 N.E.2d 1290, 1292 (Ind.Ct.App.1988)), *trans. denied.* **A benefit is a legal right given to the promisor to which the promisor would not otherwise be entitled**. *DiMizio v. Romo,* 756 N.E.2d 1018, 1023 (Ind.Ct.App.2001), *trans. denied.* A detriment on the other hand is a legal right the promisee has forborne. *Id.* **"The doing of an act by one at the request of another which may be a detrimental inconvenience, however slight, to the party doing it or may be a benefit, however slight, to the party at whose request it is performed, is legal consideration for a promise by such requesting party.**" *Harrison-Floyd Farm Bureau Coop. Ass'n v. Reed,* 546 N.E.2d 855, 857 (Ind.Ct.App.1989). In the end, "consideration–no matter what its form–consists of a bargained-for exchange." *Horseshoe Hammond,* 865 N.E.2d at 729.

Belterra, 935 N.E.2d at 179. (**Emphasis added**).

Returning to Taxpayer's protest, based on the documentation that Taxpayer provided, the following occurred:

- Taxpayer e-mailed Company E that she was not going to deposit the check and that she would not be staying employed at Company E. Taxpayer provided a photocopy of the check, dated "9/29/21" from Company E to her, with "void" written on it.
- A photocopy of the Indiana "Certificate of Title for a Vehicle" (Title) shows Company E as the seller and Taxpayer as the purchaser.
- The photocopy of the title shows the purchase date as "10/4/21" and the issue date as "10/12/21."
- The photocopy of the title has a selling price of $12,415 for the vehicle and Taxpayer as the purchaser, the same amount as the check from Company E to Taxpayer.
- Taxpayer also provided an e-mail that stating she maintained the insurance on the vehicle.

In summary: Taxpayer's new employer offered to purchase the vehicle she already owned and allow her to continue to use the vehicle for her new job at Company E. This purchase took place, with Company E paying (in the form of a check) Taxpayer $12,415 for the vehicle. Company E then titled the vehicle in its name. After a very short time at Company E, Taxpayer decided she would leave Company E. Taxpayer had not cashed the check for the vehicle and informed Company E of this. Since Company E had already titled the vehicle in its name, Company E then filled out the 'new' Certificate of Title stating that it was (now) the seller and that Taxpayer was the purchaser of the vehicle (for $12,415).

In applying *Belterra* to Taxpayer's facts, the Department notes that: (1) there was an offer by Company E to purchase Taxpayer's vehicle; (2) Taxpayer accepted the offer; and (3) that there was consideration (the check, albeit ultimately not deposited by Taxpayer). The Department finds that, even with the check for the vehicle not deposited by Taxpayer, for the week (or so) Taxpayer worked at Company E that Taxpayer nonetheless received a benefit– "however slight"–as the *Belterra* court put it in quoting the *Harrison-Floyd Farm Bureau Coop. Ass'n v. Reed* opinion. *See Belterra*, 935 N.E.2d at 179. The Department finds also that the initial titling of the vehicle by Company E was a "detrimental inconvenience, however slight[.]" *Id*. Thus, the first transaction was Company E's acquisition of the vehicle.

Regarding the second transaction–Taxpayer's reacquisition of ownership of the vehicle–it appears to have been an attempt by Taxpayer and Company E to in effect 'unwind' the first transaction (or rescind it). As noted *supra*, ownership transferred to Company E with the first sales transaction. The subsequent transfer of the title back to Taxpayer is subject to use tax pursuant to IC § 6-2.5-3-6(b): "[t]he person who uses, stores, or consumes the tangible personal property [namely, Taxpayer's vehicle] acquired in a retail transaction is personally liable for the use tax." Additionally, 45 IAC 2.2-3-5(a) provides that (**emphasis added**):

> For purposes of the state gross retail tax and use tax, transactions representing isolated or occasional sales of vehicles required to be licensed by the state for highway use in Indiana shall constitute retail transactions under the provisions of this section. **Every sale by a resident or nonresident person who is not a retail merchant as defined in this act of a vehicle required to be licensed by the state for highway use in Indiana shall be deemed a retail transaction and the use of such vehicle shall be subject to the use tax which shall be paid by the purchaser to the Bureau of Motor Vehicles at the time of the licensing of the vehicle by the purchaser.**

And 45 2.2-3-22 states (**emphasis added**):

> **No vehicle shall be licensed by Indiana for highway use in Indiana unless the registered owner thereof shall present to the licensing agency at the time such vehicle is first licensed in his name proper evidence, as prescribed by the Department, of the payment of the state gross retail tax or use tax owing in respect to his acquisition of ownership of such vehicle,** or shall then pay to such agency upon forms and receipts prescribed by the Department, the amount of any such tax owing and unpaid on the purchase of such vehicle.

The Department finds that Taxpayer has not met the burden of proof imposed under IC § 6-8.1-5-1(c) regarding her reacquisition of ownership of the vehicle.

FINDING

Taxpayer's protest is denied.

March 7, 2023

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An html version of this document.