Mr. Joe McCord, Director  
Department of Financial Institutions  
1024 State Office Building  
Indianapolis 4, Indiana

Dear Mr. McCord:

This is in response to your letter requesting an Official Opinion on the following problem:

“Some Retail Installment Sales licensees operating in Indiana have requested a ruling from this Department as to whether the amount of sales tax may be included in ‘the principal balance owed’ on retail installment sales contracts, as set forth in Burns Indiana Statutes 58-904(5).

“In view of the fact that such inclusion would result in finance charges on the amount of the sales tax (Refer Burns Indiana Statutes Section 58-907) we are asking that you advise us in the matter by an official opinion * * *”

This Opinion is necessarily based upon the interpretation placed upon the Gross Income Tax Act of 1933, as amended, being the Acts of 1933, Ch. 50, as last amended by Acts of 1963 (Spec. Sess.), Ch. 30, as found in Burns’ (1964 Supp.), Section 64-2651 et seq., hereafter referred to as the Sales Tax Act, by the Supreme Court of Indiana in the case of Welsh v. Sells (1963), — Ind. —, 192 N. E. (2d) 753, 193 N. E. (2d) 359.

This Opinion also assumes that the Indiana sales tax is a transactions tax levied upon certain transactions of retail merchants which constitute selling at retail, that the purchaser is the taxpayer and that the seller collects the tax as the agent of the State of Indiana and holds the tax in trust for the State of Indiana.

Whether or not the Indiana sales tax is includable in “the principal balance owed” on a retail installment sales contract
and therefore includable as an amount subject to finance charges is a new question of law in Indiana and is resolved in this Opinion by considering the Retail Installment Sales Act, being the Acts of 1935, Ch. 231, as amended, as found in Burns' (1961 Repl.), Section 58-901 et seq., hereafter referred to as the act, in light of the express provisions and operation of the Indiana Sales Tax Act. The law of other jurisdictions is considered; however, it should be noted that no other jurisdiction has been found in which all of the following are present:

(1) An excise tax on retail transactions which is borne by the purchaser and in which the seller acts as the State's agent for collection and holds the tax in trust for the State.

(2) A retail installment sales act which is similar to the Indiana law.

(3) A failure to provide for the payment of sales taxes in a retail installment sales transaction either in the sales tax law itself or in some section of the State's retail installment sales act.

Burns' 58-907, supra, reads as follows:

"No retail instalment contract authorized by section three of this act which is executed in connection with any retail instalment sale shall evidence any indebtedness in excess of the time balance fixed, in the written instrument in compliance with item (7) of section four of this act, but it may evidence in addition, any agreements of the parties including agreements for the payment of delinquent charges, taxes and fees, including attorney's fees. No retail seller, directly or indirectly, shall contract for or receive from any retail buyer, as consideration for the extension of credit to the retail buyer for the amount of the principal balance, any further or other amount whatsoever for examination, service, brokerage, commission, expense, fee or other thing of value than the finance charge, charges and fees permitted by this act, taxes on account of any retail instalment contract or on specific goods sold thereunder and any lawful fees
actually paid out by the retail seller to any public officer for filing or recording or releasing any instrument securing the payment of the obligation owed on any retail instalment contract. The lawful fees may be collected when the retail instalment contract is made or at any time thereafter, but may not be included in the principal balance fixed in the written instrument in compliance with item (5) of section four hereof.” (Our emphasis)

The Indiana sales tax is not includable in “the principal balance owed on the retail installment contract” or as an amount subject to finance charges by reason of the language of this section for the following reasons:

(1) The sales tax is imposed on account of or by reason of a sale of tangible personal property made by a retail merchant in a transaction constituting selling at retail and not “on account of [the] retail installment contract.” The sales tax is a tax imposed upon the retail sale, not upon the retail installment contract.

(2) The sales tax is a transactions tax levied upon certain transactions of retail merchants which constitute selling at retail, as distinguished from a tax levied upon certain specific goods when they are sold at retail by a retail merchant. The legal importance of making this fine distinction can be seen by comparing the opposite results reached by two Federal courts as a consequence of classifying the Federal Excise Tax on Jewelry, Furs, Toilet Preparations, Luggage and Handbags as being one or the other of these two tax classifications.

Worrell’s Limited v. United States (U. S. C. C., 1962), 301 F. (2d) 317;


Consequently, the sales tax cannot qualify as a tax on account of or by reason of the specific goods sold under the retail installment contract.

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Under the provisions of the sales tax act, the sales tax must be paid by the purchaser and must be collected by the retailer, an agent for the State of Indiana, in any transaction subject to the tax, as a separate added amount not part of the price or consideration. The tax is deemed to be held in trust by the retail merchant and owned by the State of Indiana.

See also:

Acts of 1933, Ch. 50, as amended, Sections 36, 49 and 50, as found in Burns' 64-2651, 64-2664 and 64-2665, supra.

Therefore, by operation of the sales tax law itself, the issue of whom shall pay the tax is removed as a possible subject of the bargain and agreement between the buyer and seller and a promise made by the buyer to pay the tax, purportedly given in consideration of the seller's promise to extend credit for the amount of the principal balance (owed on the retail installment contract), would be nothing more than a promise by the buyer to do what the law already requires him to do.

Section 4 of the Indiana Retail Installment Sales Act, being Burns' 58-904, supra, recites the items which are properly includable in a retail installment sales contract and prescribes the order in which these items are to be recited in the instrument.

"Every written instrument evidencing a retail installment sale shall recite the following separate items as such and in the following order:

"(1) The cash price of the specific goods.

"(2) The amount in cash of the retail buyer's down payment, whether made in money or goods or partly in money or partly in goods.

"The term 'down payment' for the purpose of this section, shall mean that part payment of the cash price required by the retail seller as a condition to the delivery of the specific goods sold or to be sold or to the extension of credit to the retail buyer for any portion of the cash price."
(3) The unpaid balance of the cash price payable by the retail buyer to the retail seller which is the difference between items (1) and (2).

(4) The cost to the retail buyer of any insurance the retail buyer has agreed to procure, if the retail seller has agreed to purchase the insurance and extend credit to the retail buyer for the price thereof.

(5) The principal balance owed on the retail installment contract which is the sum total of items (3) and (4).

(6) The amount of the finance charge.

(7) The time balance owed by the retail buyer to the retail seller and the number of installment payments required and the amount and date of each payment necessary finally to pay the time balance which is the sum total of items (5) and (6).

"Item (4) and item (6) may be added together and stated as one sum in the written instrument and if so stated item (5) may be omitted, but in such event the retail seller shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract a statement reciting the separate amounts of items (4) and (6)." (Our emphasis)

States having statutes containing language similar to that used in this section, have construed the language to be mandatory as to what can and cannot be included in a retail installment sales contract.


Stride v. Martin (1945), 184 Md. 446, 41 A. (2d) 489, 491-492;


This limitation contained in Section 4 of the Act, being Burns' 58-904, supra, upon items includable in the contract is modified by the aforementioned provisions of Section 7 of the Act, being Burns' 58-907, supra, only to the extent that the instrument may evidence any indebtedness in addition to the time balance fixed in compliance with Section 4(7) which is attributable to any agreement between the parties for the payment of delinquent charges, taxes and fees. However, this language cannot be construed so as to authorize the inclusion of delinquent charges, taxes and fees as an additional item or items in Section 4 of the Act. It merely states that the instrument may evidence certain indebtedness in addition to that determined under the provisions of Section 4 of the Act. Also, for reasons heretofore stated, there can be no legal agreement which changes the incidence of the sales tax. The buyer must pay it and the seller must collect it.

Whether or not the amount of the sales tax may be included as a part of any item which is specifically recited in Section 4 of the Act, being Burns' 58-904, supra, which is used in the computation of “the principal balance owed on the retail installment contract” is a question which must be answered in light of the definition of each of these items as set forth in the act. Of the four items recited, item (3) is clearly a mathematical computation of the difference between items (1) and (2), and item (4), which relates to the cost of insurance, has no reasonable relation to the question of taxes by reason of the sales transaction. Since item (2) is specially defined by Section 4 of the Act, Burns' 58-904, supra, as being a certain specific item of part payment of the “cash price” [item 1], the gist of your request becomes: Is the amount of the sales tax includable as a part of the cash price of the specific goods sold?

Under the literal definition of “cash price” contained in Section 1 of the Act, Burns' 58-901, supra, the amount of the cash price is made the subject of good faith agreement between buyer and seller.
“The term ‘cash price’ means the price, measured in dollars, agreed upon in good faith by the parties for the specific goods which are the subject matter of any retail instalment sale.”

In light of the express language of this section, which makes price a matter of good faith agreement between the parties, and those sections of the Sales Tax Act which remove the incidence of the sales tax as a subject of agreement, particularly that part of Section 49 of the Sales Tax Act, Burns’ 64-2664, supra, which states:

“The state gross retail tax and the use tax shall be collected by the retail merchant, as agent for the State of Indiana, from the purchaser of property or services furnished in the transaction subject to said taxes as a separate added amount not part of the price or consideration * * *” (Our emphasis)

It would follow that “cash price,” as used in the act, cannot include the amount of the sales tax.

Other jurisdictions having both a sales tax which operates as a retail transactions tax borne by the purchaser and a form of retail installment sales act, have generally made express provision for payment of the sales tax in a retail installment sales transaction in the sales tax law itself.

The States of Connecticut and California, although in the category of states which impose the tax as an occupation tax on the seller for the privilege of selling at retail, have established precedent concerning the issue of whether or not the amount of the sales tax is necessary or includable as a part of the purchase or “cash price” of the specific goods which are the subject matter of the retail installment sales contract. Connecticut holds flatly that it is not.

“The defendant claims that the contract does not describe all the conditions of the sale because it fails to set forth the amount of the sales tax payable under § 941c of the 1953 Cumulative Supplement, as amended, Nov. 1955, Sup., § N144, as required by General Statutes § 2095(6). Section 2162c requires that a
conditional sale contract shall be in writing, 'describing the property and all conditions of such sale.' The sales tax is a tax imposed upon the vendor for the privilege of selling tangible personal property at retail. General Statutes § 2092(1). Section 2092(2) requires the seller to collect the amount of the tax from the purchaser. *The collection of this amount is a transaction collateral to the sale itself. The amount of the tax is in no sense a part of the purchase price of the article purchased.* It follows that when the sale price of the automobile was stated in the conditional sale contract now before us and the amount of the sales tax was not included, there was a correct statement of the price to be charged for the automobile. In other words, the statement of the price of the automobile set forth in the conditional sale agreement was a true statement of that condition of the sale. Consequently, the conditional sale agreement was not invalid.” (Our emphasis)

Second National Bank v. Montesi (1957), 144 Conn. 311, 130 A. (2d) 796, 797.

In California, an otherwise similar statutory definition of “cash price” includes “* * * any applicable sales taxes.”

See:


Also, in California, unless the purchaser expressly agrees to pay the amount of the sales tax, he is under no legal liability to do so; i.e., collection of the tax by the seller from the purchaser is not made mandatory.

See:


Therefore, in California (and Illinois and Arizona), where the seller is deemed to be the taxpayer and not a mere collector or agent for collection of the tax, the sales tax is treated
as a part of the seller's cost of doing business which the seller may recoup from the purchaser as any other cost and, consequently, the sales tax is properly made a part of the agreed purchase or "cash price" of the specific goods which are the subject matter of the retail installment sales contract.

See:


In my opinion, the principle announced in the Connecticut case; i.e., that the seller collects the tax in a transaction which is collateral to the sale itself, is compatible and in harmony with the principle of operation contained in Sections 36, 49 and 50 of our Sales Tax Act, Burns' 64-2651, 64-2664, 64-2665, supra, and that the Connecticut rule of exclusion of sales tax from "cash price" is applicable and should be followed.

Because of the exclusive nature of Section 4 of the Retail Installment Sales Act, being Burns' 58-901 et seq., supra, as the determinant of "the principal balance owed on the retail installment contract" and the incidence and operation of the Indiana Sales Tax Act, Burns' 64-2651 et seq., supra, which, in effect, excludes the amount of the sales tax from the price or consideration paid for the specific goods sold, I am of the opinion that no authority exists in Indiana which authorizes or permits the inclusion of the amount of the Indiana State Gross Retail Tax in "the principal balance owed on [a] retail installment contract."

In holding that the sales tax cannot be included in those items which constitute the principal balance, it is not inferred that the sales tax may not be included in the additional items constituting the time balance.