

Letter of Findings Number: 06-0255
Sales and Use Tax
Responsible Officer
For the Tax Period 1995-1996

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ISSUE

1. Sales and Use Tax-Responsible Officer Liability

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-3-2(a); IC § 6-2.5-3-4; IC § 6-2.5-9-3.

The Taxpayer protests the assessment of responsible officer liability for unpaid corporate use taxes.

STATEMENT OF FACTS

The Taxpayer was an officer of a limited liability corporation that did not pay sales tax on the aircraft purchase price. The Indiana Department of Revenue (Department) assessed the sales tax on the purchase of the airplane. The corporation protested the assessment. A hearing was held. The Department issued a Letter of Findings upholding the sales tax assessment. The corporation requested a rehearing. The Department denied the rehearing request. The corporation did not pay the sales tax. The Department subsequently assessed the use tax for the corporation's use of the aircraft against the Taxpayer personally. The Taxpayer protested the personal assessment of corporate use tax. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the assessed taxes are owed by the Taxpayer. IC § 6-8-1-5-1(b). The Taxpayer has the burden of proving that the assessment is incorrect. *Id.*

The Taxpayer first argued that the Department erred in assessing sales tax on the corporation's purchase of the airplane. On February 24, 2005, the Department settled that issue by issuing a Letter of Findings stating that the Department properly assessed sales tax on the purchase of the airplane. Subsequently, the Taxpayer requested a rehearing which the Department denied. The Taxpayer exhausted its administrative remedies concerning the imposition of sales tax on the transaction.

Indiana imposes a use tax at IC § 6-2.5-3-2(a) as follows:

An excise tax, known as the use tax, is imposed 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.

The aircraft was purchased from a concern in the business of selling airplanes. The aircraft was used in Indiana. Therefore, unless it qualified for an exemption, the corporation is liable for the use tax on the aircraft usage.

An exemption from the use tax is granted for transactions where the sales tax was paid pursuant to IC § 6-2.5-3-4. Since no sales tax was paid on the aircraft transaction, the corporation does not qualify for this exemption.

The proposed personal use tax liability was issued under authority of IC § 6-2.5-9-3 that provides as follows: An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

In this case, the corporation did not pay the use tax it owed the state. As an officer of the corporation, the Taxpayer is a person who has the duty to remit the use tax to the state. Therefore, the Taxpayer is personally responsible for payment of the corporate use tax.

FINDING

The Taxpayer's protest is respectfully denied.

Posted: 02/28/2007 by Legislative Services Agency

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