

**Letter of Findings Number: 06-0260
Sales and Use Tax
For the Tax Period 2002**

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ISSUE

I. Sales and Use Tax - Imposition

Authority: IC § 6-8.1-5-1(b), IC § 6-2.5-2-1, IC § 6-2.5-3-2(a), IC § 6-6-6.5-8(d), *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The taxpayer protests the assessment of use tax on an airplane.

STATEMENT OF FACTS

The Taxpayer is an Illinois corporation that purchased an airplane in 2002. The Indiana Department of Revenue (Department) assessed Indiana use tax, interest, and penalty on the use of the airplane measured by the purchase price. The Taxpayer protested the assessment of use tax. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax -Imposition

DISCUSSION

All tax assessments are presumed to be accurate IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. Id. Exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana also imposes a complementary excise tax, the use tax, on the use of tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana when no sales tax was paid. IC § 6-2.5-3-2(a).

IC § 6-6-6.5-8(d) provides for the payment of sales or use tax on an airplane as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

- (1) The time the aircraft is registered; or
- (2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.

The Taxpayer argued that its use of the airplane was not subject to Indiana use tax because the Taxpayer was an Illinois corporation that registered the airplane in Illinois. The Illinois Department of Transportation "Application for Registration of Federal Aircraft Certificate" filed by the taxpayer on May 1, 2002 indicated that the airplane was based at an Indiana airport. The airport listed on the Illinois document has also reported that the airplane is based at the Indiana airport.

The Taxpayer's airplane was stored and used in Indiana. No sales tax was paid on the purchase of the airplane. Therefore, the Department properly imposed the Indiana use tax on the Taxpayer's use of the airplane in Indiana.

FINDING

The Taxpayer's protest is respectfully denied.

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