

**Letter of Findings Number: 06-0440  
Sales and Use Tax  
For the Tax Period 2005**

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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 6-2.5-32\(c\)\(1\)](#); IC § 6-6-6.5-8(d); [45 IAC 2.2-5-15](#); [45 IAC 2.2-4-27\(d\)](#); *Indiana Dep't. 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 a limited liability corporation which bought an airplane in 2005. The Indiana Department of Revenue, hereinafter referred to as the "Department," assessed Indiana use tax, interest, and penalty on the airplane. 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 and the Taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b). Exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dep't. 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 imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC § 6-2.5-3-2(c)(1).

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 bases its claim for exemption on the following provisions of IC § 6-2.5-5-8 which states as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property....

The law concerning the exemption for rental to others is further explained at [45 IAC 2.2-5-15](#) as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

The Taxpayer stated that it was in the business of renting the aircraft and therefore qualified for the rental exemption on the airplane. This exemption requires compliance with three elements. One of these requirements is that the airplane must be purchased with the intention of renting the airplane. The Taxpayer submitted the "Minutes of the Initial Meeting of Members" to substantiate its claim that the airplane was purchased for the purpose of "rental pursuant to written aircraft rental agreements."

Another of these requirements is that the Taxpayer must be engaged in the reselling, renting, or leasing of such property in its regular course of business. In the Taxpayer's situation, the Taxpayer is a limited liability corporation that markets its airplane through an Airport Authority. The Taxpayer argued that the Airport Authority is its agent in the rental of its airplane. As agent, the Airport Authority markets the airplane, rents the airplane, receives payment for the rentals, and remits sales tax on the rental income to the Department. To substantiate this claim, the Taxpayer submitted the "Aircraft Marketing Agreement." With this agreement, the Taxpayer names the Airport Authority as its agent for "marketing, collection, and compliance." The Taxpayer also submitted copies of invoices demonstrating that the agent actually collected the sales tax from the renters to which the aircraft is leased. The agent remitted the sales tax to the Department.

Although the Airport Authority purportedly collected sales tax each time it rented the airplane on behalf of taxpayer, the Airport Authority apparently failed to remit sales tax directly in the name of the Taxpayer. Whatever sales tax was collected on the rental transactions, was remitted and credited to the Airport Authority. On its face, this would seem to indicate that the Airport Authority was renting the aircraft; Taxpayer is entitled to the exemption "if the person [taxpayer] acquiring the property acquires it for resale, rental, or releasing in the ordinary course of [taxpayer's] business...." IC § 6-2.5-5-8.

The Taxpayer also argued that its key officers – just like any other renter – pay market rates for the rental of the aircraft through the agent. The Taxpayer submitted invoices indicating that the key people actually paid market rates and also paid the sales tax on the rental. In compliance with the "Aircraft Marketing Agreement," the Taxpayer's key people also paid sales tax to the agent who remitted the sales tax to the Department.

The Taxpayer also argued that its agent offered the airplane for rental to qualified members of the general public. The Taxpayer submitted the monthly sales summaries which it received from the agent to indicate that the airplane is often rented to persons other than the Taxpayer's key people.

The Taxpayer submitted documentation indicating that the Taxpayer purchased insurance that covered the airplane for the business of leasing the aircraft. The evidence of the marketing of the aircraft, collection of sales tax, remitting of sales tax to the Department, rental to the general public, rental at the general public rates to the Taxpayer's key people, and insurance coverage for the rental situation indicates that the Taxpayer was actually engaged in the rental of the airplane in its regular course of business.

The final requirement is that the Taxpayer must lease the airplane in the same form in which it was purchased. The Taxpayer also offered evidence indicating that it met this requirement.

Assuming that the Airport Authority can verify that it collected market rate rental amounts each time it rented the airplane and the Airport Authority can distinguish and verify the amount of sales tax which should have been collected in taxpayer's name, the Department is willing to concede that the Taxpayer sustained its burden of proving that the airplane was purchased for the purpose of renting it in the Taxpayer's ordinary course of business as required by IC § 6-2.5-5-8.

#### **FINDING**

The Taxpayer's protest to the assessment of use tax on its airplane is sustained, subject to audit verification that the collected sales taxes were actually remitted to the Department and that market rental rates were charged for all airplane rentals.

*Posted: 10/03/2007 by Legislative Services Agency*  
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