

**Letter of Findings: 07-0171
Sales and Use Tax
For the Year 2006**

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ISSUE

I. Sales and Use Tax – Leasing.

Authority: IC § 6-2.5-3-4; IC § 6-2.5-5-8.

Taxpayer protests the assessment of use tax on an airplane.

STATEMENT OF FACTS

Taxpayer is a limited liability company. Taxpayer is owned by two persons, an S corporation and an individual. The individual also owns all the shares of the S corporation.

In September 2006, Taxpayer purchased an airplane. Taxpayer provided an exemption certificate to the seller. The exemption certificate stated that Taxpayer purchased the aircraft for resale. However, Taxpayer leased (and continues to lease) the plane to the S corporation.

The Department reviewed Taxpayer's documentation. Based on the documentation, the Department determined that Taxpayer did not use the airplane for an exempt purpose and assessed use tax. Taxpayer protested the assessment, the Department conducted a hearing, and this Letter of Findings results.

DISCUSSION

I. Sales and Use Tax – Leasing.

Taxpayer initially claimed the purchase of the airplane was exempt because Taxpayer purchased the aircraft for resale. Under IC § 6-2.5-5-8(b),

Transactions involving tangible personal property other than a new motor vehicle 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 the person's business without changing the form of the property.

Taxpayer has conceded that the sale-for-resale exemption does not apply with respect to the aircraft at issue. IC § 6-2.5-3-4 states:

If a person issues a state gross retail or use tax exemption certificate for the acquisition of tangible personal property and subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person shall pay the use tax.

The issue becomes whether Taxpayer purported lease of the airplane to the S corporation qualifies for a leasing exemption. If Taxpayer's airplane is leased without an intervening taxable use, Taxpayer is not liable for use tax because Taxpayer used the airplane in an exempt manner under IC § 6-2.5-5-8. If the lease is not considered a lease or an intervening taxable use occurred, Taxpayer is subject to use tax on the full purchase price of the airplane.

Taxpayer, the S corporation, and the individual that owns the S corporation and effectively owns Taxpayer are related individuals. However, the fact that the lessor and lessee are related parties is not fatal to the legitimacy of a leasing arrangement. Furthermore, though Taxpayer and the S corporation entered into an exclusive leasing agreement, the fact that the plane is not held out for lease to third parties is also not *per se* fatal to the legitimacy of a leasing arrangement.

With respect to the airplane at issue, the S corporation pays a flat monthly rent plus an additional amount if the S corporation flies the airplane over a specified number of hours. The flat monthly rental rate is consistent with the projected market rents of the airplane between unrelated parties. Furthermore, the S corporation paid the flat monthly rental during a one-month period in which the airplane could not be flown. Taxpayer has remitted sales tax each month on the full rental price of the airplane.

In addition, the S corporation has incurred all insurance and maintenance costs during the lease term. The insurance policy does not limit Taxpayer's use of the airplane.

In this protest, Taxpayer has provided sufficient information to conclude that it leased the aircraft and therefore the use tax should not have been assessed at the present time.

FINDING

Taxpayer's protest is sustained.

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