

**Letter of Findings: 07-0068
Sales and Use Tax
For the Year 2006**

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ISSUES

I. Use Tax – Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-3-2; [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-6](#); [45 IAC 2.2-4-1\(b\)](#); *Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment to him of use tax on one-hundred percent of the "book value" of an aircraft when he only purchased a fifty-percent interest in the aircraft.

II. Use Tax – Collection and Computation.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-3-2; IC § 6-2.5-3-6; [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-6](#); *Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the value the Department ascribed to the transaction.

STATEMENT OF FACTS

Taxpayer, an Indiana corporation, purchased a fifty percent interest in an aircraft in 2006 from another company (Co-Owner). Taxpayer did not pay sales tax on the purchase. A 2006 Federal Aviation Administration Bill of Sale documented the sale by Co-Owner of a fifty percent ownership interest to Taxpayer for consideration of "1 & OVC" (one dollar (\$1) and "other valuable consideration"). The Indiana Department of Revenue (Department) assessed use tax on one-hundred percent of the "book value" of the aircraft. Taxpayer protested the assessment to it of use tax on one-hundred percent of the "book value" of the aircraft when it only purchased a fifty-percent interest in the aircraft. Taxpayer also protested the specific value the Department ascribed to the transaction in order to assess use tax. A hearing was held, and this Letter of Findings ensues. Additional facts will be provided as necessary.

Taxpayer also protested the assessment of use tax on the 2006 transaction claiming that he had owned the aircraft since 1997 and that the 2006 transaction was merely for insurance purposes. At the hearing, Taxpayer withdrew its protest on this issue.

I. Use Tax – Imposition.

DISCUSSION

The Department ascribed one-hundred percent of the "book value" of the aircraft to Taxpayer's use of the aircraft due to its purchase of a fifty-percent interest in the aircraft. Taxpayer argued that since the transaction was for a fifty-percent interest in the aircraft he should be assessed use tax based on fifty percent of the "book value" of the aircraft, not on one-hundred percent as the Department assessed.

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), (c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes a use tax on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2. Furthermore, all Indiana sales (and subsequent use) of aircraft then registered in Indiana are deemed to be retail transactions. [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-6\(b\)\(1\)](#).

IC § 6-2.5-3-2 states in part:

(a) 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.

(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

(1) is acquired in a transaction that is an isolated or occasional sale; and

(2) is required to be titled, licensed, or registered by this state for use in Indiana.

[45 IAC 2.2-3-6\(b\)\(1\)](#) states:

(b) For the purpose of the state gross retail and use tax:

(1) The sale of aircraft by any person licensed as an aircraft dealer in Indiana has been, and will continue to be, a retail sale. Transactions representing isolated or occasional sales of aircraft required to be licensed by the state for use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in the Indiana gross retail tax act [[IC 6-2.5](#)] of an aircraft required to be licensed by the state for use in Indiana shall be deemed a retail transaction, and the use of such aircraft shall be subject to the use tax which shall be paid by the

purchaser to the aeronautics division of the department of transportation at the time of the licensing of the aircraft by the purchaser.

In addition to the Bill of Sale referenced in the "Statement of Facts" above which described Taxpayer's purchase of a fifty percent interest in the aircraft, Co-Owner submitted a "Sworn Affidavit Form" (Affidavit), dated October 23, 2006, which stated the transaction of the same interest to Taxpayer.

Given that Taxpayer purchased a fifty percent interest in the aircraft, it stands to reason that the use tax assessed to Taxpayer on the transaction should be calculated on fifty percent of the sale price of the aircraft. Taxpayer has met its burden to show that it should pay use tax on only its fifty percent interest in the aircraft and not on one-hundred percent as assessed by the Department.

FINDING

Taxpayer's protest is sustained.

II. Use Tax – Collection and Computation.

DISCUSSION

Taxpayer also protested the sale price the Department ascribed to Taxpayer's purchase of a fifty-percent interest in the aircraft. As stated above, the 2006 Federal Aviation Administration Bill of Sale documented the sale by Co-Owner of the fifty percent ownership interest to Taxpayer for consideration of "1 & OVC" (one dollar (\$1) and "other valuable consideration"). Also, Taxpayer provided an Affidavit by Co-Owner which was on a state form the purpose of which is provide a "statement made for the purpose of providing a value for use by the Indiana Department of Revenue in determining the purchaser's Sales/Use Tax." The Affidavit stated that the transaction had been entered into "for insurance purposes." The Affidavit also stated that "no money changed hands." The Department assessed use tax on a sale price it based on the aircraft's "book value" in the Aircraft Bluebook Price Digest.

As stated previously, 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), (c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Also as stated previously, Indiana imposes a use tax on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2. Furthermore, all Indiana sales (and subsequent use) of aircraft then registered in Indiana are deemed to be retail transactions. [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-6\(b\)\(1\)](#).

IC § 6-2.5-3-6 states the liability, payment, collection, and computation of the use tax. The statute covers the calculation of use tax as applied to aircraft. IC § 6-2.5-3-6(d). According to IC § 6-2.5-3-6(e):

At the time a person pays the use tax for the purchase of a vehicle to a titling agency pursuant to subsection (d), the titling agency shall compute the tax due based on the presumption that the sale price was the average selling price for that vehicle, as determined under a used vehicle buying guide to be chosen by the titling agency. However, the titling agency shall compute the tax due based on the actual sale price of the vehicle if the buyer, at the time the buyer pays the tax to the titling agency, presents documentation to the titling agency sufficient to rebut the presumption set forth in this subsection and to establish the actual selling price of the vehicle.

(Emphasis added).

Therefore, according to IC § 6-2.5-3-6(e), the Department computed the use tax on the presumption that the sale price of the aircraft was its "average selling price." Also, per IC § 6-2.5-3-6(e), the Department based the presumed "average selling price" calculation on the particular aircraft's "book value" in the Aircraft Bluebook Price Digest, the buying guide of the Department's choice. The Department, therefore, calculated the presumed average selling price of the aircraft. Taxpayer had the opportunity, then, to provide the Department with documentation "sufficient to rebut the presumption" set forth in the statute in order to establish the actual selling price of the aircraft.

Per [45 IAC 2.2-4-1\(b\)](#):

All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:

- (1) The price arrived at between purchaser and seller.
- (2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.
- (3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.

The consideration stated on the Bill of Sale was one-dollar and "other valuable consideration." The seller, Co-Owner, in its Affidavit, stated that the transaction took place for insurance purposes and that no money changed hands. At the hearing, Taxpayer alluded that this had to do with a certain pilot, affiliated with Co-Owner, being able to fly the aircraft. Taxpayer and Co-Owner, did not clearly set forth the consideration involved in this bargained for exchange. Taxpayer did not provide information specific enough to value this consideration and thus reflect the *actual* selling price of the aircraft. Taxpayer was afforded the opportunity to have the aircraft in

question appraised in order to establish its retail value. Taxpayer did not do so. Taxpayer did provide, subsequent to the hearing, what appears to be a valuation of an aircraft of the same model (the serial number of the aircraft is not the same as the one in question). Taxpayer also provided a classified advertisement for the same model of aircraft. Neither of these documents, however, establish how they compare to the particular features of the Taxpayer's aircraft; i.e., the aircraft's condition, mileage, equipment, etc. Furthermore, the valuation and the sale price in the classified add are widely divergent. Taxpayer did not provide the Department with particularized information regarding the valuation of the aircraft.

Taxpayer has not met its burden to establish the actual sale price of the aircraft. Therefore, the Department's use of the "book value" stands. However, the Department's assessment of use tax should be calculated on fifty-percent of that valuation (see Issue I).

FINDING

Taxpayer's protest is respectfully denied.

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