

**Letter of Findings: 07-0528
Gross Retail Tax
For the Year 2007**

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ISSUES

I. Aircraft Purchase – Gross Retail Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-1 to 40; IC § 6-2.5-5-8; IC § 6-6.5-2(a); IC § 6-8.1-5-1(b); IC § 6-6.5-3; IC § 6-6.5-8(d); [45 IAC 2.2-4-27\(c\)](#); [45 IAC 2.2-5-15\(b\)\(2\)](#).

Taxpayer argues that it was not subject to sales tax on the purchase price of an aircraft.

II. Ten-Percent Negligence Penalty.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(4); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer seeks abatement of the ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a Florida corporation. The taxpayer is owned by a part-time resident of Indiana and who is also a part-time resident of Florida. This part-time resident is taxpayer's sole director and officer. Taxpayer acquired a Cessna aircraft in 2006. On June 15, 2007, the Indiana Department of Revenue (Department) issued taxpayer a "Notice of Proposed Assessment" for \$60,000 of "sales/use tax." This tax was determined based upon the Department's "Estimated Aircraft Value" of \$1,000,000. The Department issued the assessment because of information it received in a "Based Aircraft Report," indicating that taxpayer's aircraft was hangered *[sic]* at an Indianapolis airport. Taxpayer protested on the ground that the taxpayer "is a Florida corporation and the... referenced aircraft... is not and has never been based within the State of Indiana." An administrative hearing was conducted during which taxpayer explained the basis for the protest. This Letter of Findings results.

I. Aircraft Purchase – Gross Retail Tax.

DISCUSSION

Taxpayer argues that the aircraft is exempt from sales/use tax because the aircraft is leased and because the "[a]ircraft was never based in Indiana [and] was used here only occasionally as part of larger interstate transactions...." In addition, taxpayer argues that the imposition of the "use tax on the Aircraft unconstitutionally taxes interstate commerce."

A. Indiana/Florida Based Aircraft.

The Department assessed the use tax on the aircraft because it received a "Based Aircraft Report" from the operator of an Indianapolis airport indicating that the Cessna was regularly hangered *[sic]* at that airport. The "Based Aircraft Report" provided taxpayer's Indiana address. Taxpayer disagrees stating the taxpayer – as the corporate owner of the aircraft – is a Florida corporation and "has never based the Aircraft in Indiana."

IC § 6-6.5-2(a) provides that, "Except as otherwise provided in this chapter, any resident of this state who owns an aircraft shall register the aircraft with the department not later than thirty-one (31) days after the purchase date." IC § 6-6.5-3 states that "Any resident of this state who owns an aircraft, and any nonresident who has established a base in this state and bases an aircraft in this state for more than sixty (60) days, which is not exempt from registration under section 9 of this chapter, shall apply to the department for a certificate of registration for such aircraft." IC § 6-6.5-8(d) states that, "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." Taxpayer has not provided sufficient information to allow a determination that the aircraft was not based in Indiana and that it was not required to register the aircraft in Indiana. See IC § 6-8.1-5-1(b).

B. Rental Exemption.

Indiana imposes a gross retail (sales) tax on retail transactions in Indiana. IC § 6-2.5-2-1. The legislature has provided a number of exemptions to the imposition of that tax. See IC § 6-2.5-5-1 to -40. One of those exemptions is provided at IC § 6-2.5-5-8 which states that, "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 rental exemption set out in IC § 6-2.5-5-8 is further explained in [45 IAC 2.2-5-15](#), which states:

(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.

Therefore, if taxpayer bought the aircraft for the purpose of leasing it to others, taxpayer was not required to pay sales tax on the initial purchase price because taxpayer bought the plane for "an exempt purpose."

However, Indiana also requires that the gross retail tax be collected on income received from the rental of tangible personal property. IC § 6-2.5-2-1. [45 IAC 2.2-4-27\(c\)](#) states that, "In general, the gross receipts from renting or leasing tangible personal property are subject to tax."

Taxpayer has provided copies of two lease agreements which presumably establish that the aircraft was exempt from sales tax because the aircraft was purchased for the purpose of renting or leasing it to others in the ordinary course of taxpayer's business. However, taxpayer has not provided evidence that rent was actually collected from the taxpayer's customers or that Indiana sales tax was collected on that stream of rental income. The Department is unable to agree that the taxpayer has established that it "is occupationally engaged in reselling, renting or leasing such property in the regular course of his business." [45 IAC 2.2-5-15\(b\)\(2\)](#).

C. Constitutionality.

Taxpayer argues that "application of the Indiana use tax on the Aircraft unconstitutionally taxes interstate commerce." According to taxpayer, "A tax on aircraft that is based outside Indiana which is imposed merely because the aircraft occasionally lands in Indiana... would result in a tax (1) that is applied to an activity which lacks substantial nexus with the state, (2) that is not fairly apportioned, and (3) is not fairly related to services provided by the state." Taxpayer's argument is predicated on the assumption that the aircraft was not based in Indiana, that the "Based Aircraft Report" was erroneous, and that the aircraft only occasionally lands in Indiana. As noted above, the Department is unable to agree that taxpayer has established the predicate arguments necessary to warrant addressing the constitutionality question.

FINDING

Taxpayer's protest is respectfully denied.

II. Ten-Percent Negligence Penalty.

DISCUSSION

Taxpayer believes that it is entitled to abatement of the ten-percent negligence penalty because it had a reasonable cause for its position that it was exempt from paying use tax.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(4) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to... pay the full amount of tax shown on the person's return... or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Under IC § 6-8.1-5-1(b), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the negligence penalty – is presumptively valid.

The Department is prepared to agree that it had a "reasonable" cause to believe that it was not subject to use tax on the purchase of the aircraft.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer is denied as to the substantive issue of whether it was subject to sales tax on the purchase price of the aircraft. Taxpayer is sustained as to its protest of the negligence penalty.

