

Letter of Findings Number: 08-0059
Sales and Use Tax
For the Tax Period 2007

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ISSUE

I. Sales and Use Tax - Imposition

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); [IC 6-6-6.5-8](#).

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

STATEMENT OF FACTS

The Taxpayer is an Indiana LLC. The principal member of the Taxpayer LLC is also the principal member of a Delaware LLC with the same name. The Department assessed the Taxpayer use tax, interest, and penalty on an airplane for the tax year 2007. The Taxpayer protested the assessment arguing that it did not owe Indiana sales or use tax on the aircraft because it never purchased or owned the airplane. A hearing was held. This Letter of Findings results.

I. Sales and Use Tax - Imposition

DISCUSSION

All tax assessments are presumed to be valid. The Taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1(a). The purchaser of the tangible personal property is liable for the payment of the sales tax. IC § 6-2.5-2-1(b). 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 law requires that sales tax be paid at the time of the airplane registration or within thirty-one (31) days after the purchase of an airplane. To register an airplane, one must first own it. If one purchases an airplane, one owns the airplane. Both of these conditions precedent for the imposition of the sales and use taxes require that a taxpayer purchase and own the airplane.

The issue to be determined in this case is whether the Taxpayer ever owned the airplane upon which the use tax was imposed.

The Department reviewed documentation that indicated the FAA registration for the aircraft was changed to the Indiana mailing address of an LLC with the same name as the Taxpayer on January 18, 2007. Based on this documentation, the Department considered the aircraft to be the property of the Taxpayer. Since there was no sales tax paid at the time of the transfer of the airplane to the Indiana LLC, the Department assessed use tax, interest and penalty pursuant to IC § 6-6-6.5-8(d).

The Taxpayer contended that it never owned or registered the airplane. The Taxpayer alleged that the Delaware LLC with the same name purchased the airplane and registered as the owner of the airplane with the FAA. When renewing the FAA registration, the Taxpayer alleged that the principal member of both LLCs accidentally put the Indiana address on the FAA 2007 registration. The Taxpayer argued that since this was merely a clerical error, the ownership of the airplane was not transferred to the Taxpayer.

The Taxpayer produced substantial documentation in support of its contention that it never owned the airplane on which the Department assessed use tax. Among other items, the Taxpayer produced the bill of sale for the Delaware LLC's December 1, 2006 purchase of the airplane, the official FAA registration showing that the registered owner was the Delaware LLC, and an "Aircraft Chain of Title Report from FAA Records Search" indicating that the Delaware LLC purchased the airplane and has been the owner continuously since the 2006 purchase. The Taxpayer also provided documentation demonstrating that the principal member of both LLCs has corrected the address of the LLC owning the airplane with the FAA.

The Taxpayer sustained its burden of proving that it has never owned the airplane on which use tax was assessed. Therefore, the Taxpayer is not subject to Indiana use tax pursuant to IC § 6-2.5-3-2(a).

FINDING

The Taxpayer's protest to the assessment of use tax on its airplane is sustained.

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