

Letter of Findings Number: 08-0448
Sales and Use Tax
For Tax Years 2005-06

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax—Imposition.

Authority: IC § 6-2.5-1-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-10; IC § 6-2.5-5-16; IC § 6-8.1-5-1; [45 IAC 2.2-1-1](#); [45 IAC 2.2-4-27](#); [45 IAC 2.2-5-24](#).

Taxpayer protests the assessment of use tax on certain of its purchases relating to "dual flight time."

II. Sales and Use Tax—Imposition.

Authority: IC § 6-2.5-5-8; IC § 6-8.1-5-1; [45 IAC 2.2-5-15](#).

Taxpayer protests the assessment of use tax on certain of its purchases relating to purchases for resale.

STATEMENT OF FACTS

Taxpayer operates a flight training service that offers "dual flight time," which includes an aircraft rental and a flight instructor's services. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed use tax for the tax years 2005 and 2006. Taxpayer protested the imposition of use tax on certain of its purchases. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Sales and Use Tax—Imposition.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

On initial assessment, the Department found that Taxpayer, in providing "dual flight time" an aircraft and an instructor, was providing a "service" and its service receipts were not subject to sales tax. Based on this conclusion, the Department did not assess sales tax on Taxpayer's "dual flight time" receipts, but assessed use tax on Taxpayer's purchases of supplies, fuel, repair parts, and capital assets that were used in its provision of "dual flight time" instruction.

Indiana imposes "an excise tax, known as the use tax," on tangible personal property that is acquired in retail transactions and is stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). An exemption from the use tax is granted for transactions when sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Since Taxpayer failed to pay sales tax at the time of the purchase, the Department found that the purchases were subject to use tax.

Taxpayer maintains that since Taxpayer's use of the aircraft qualified for an exemption, Taxpayer did not need to pay sales tax on the purchases of fuel, repair parts, and capital assets used in "dual flight time" with students attending a state university. Taxpayer asserts that all its purchases relating to "dual flight time" are made as agents of the state university and are exempt from sales and use tax.

Presumably, Taxpayer is referring to the sales and use tax exemption for property predominately used in governmental functions as found in IC § 6-2.5-5-16, which provides:

Transactions involving tangible personal property, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service:

(1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under [IC 13-21](#) or [IC 13-9.5-2](#) (before its repeal); and

(2) predominantly uses the property, commodities, or service to perform its governmental functions.

Additionally, [45 IAC 2.2-5-24](#)(e) states:

Purchases must be invoiced directly to the governmental entity and paid out of governmental funds.

Purchases of tangible personal property, public utility services, and commodities by the state or a subdivision thereof are exempt from gross retail tax, provided the purchases are invoiced directly to the governmental entity and paid for out of government funds. Purchases which are for use by the governmental entity, but which are not invoiced directly to the state or subdivision or are not paid for out of governmental funds, are subject to the gross retail tax.

Accordingly, to be exempt from sales and use tax the tangible personal property purchased must be invoiced to the government agency, paid for out of government funds, and predominately used by the government to perform its governmental function.

Since all of the purchases in question were invoiced to Taxpayer, paid for by Taxpayer, and used by Taxpayer in its business, none of the purchases qualify for this governmental use exemption. While Taxpayer is mistaken about its status as making purchases as an agent for the government, Taxpayer is correct that certain of its purchases of aircraft and repair parts for the aircraft that are used in its provision of "dual flight time" are exempt from use tax. However, certain of Taxpayer's purchases, such as fuel and shop supplies, which Taxpayer are considered "consumables" of the Taxpayer that are subject to use tax as provided in [45 IAC 2.2-4-27\(d\)\(4\)](#). Therefore, Taxpayer's protest, as it pertains to the "consumable items," used in its provision of "dual flight time" instruction, is denied; Taxpayer's protest, as it pertains to the "non-consumable items," to the extent that use tax was assessed, is sustained in part subject to the findings of a supplemental audit.

Moreover, Taxpayer is on notice that in providing "dual flight time," which includes an aircraft rental with flight instruction services, Taxpayer is acting as a "retail merchant" making "retail transactions." Pursuant to IC § 6-2.5-4-10(a), "A person... is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person." Retail transactions are subject to gross retail (sales) tax as imposed under IC § 6-2.5-2-1(a). Thus, Taxpayer is providing an aircraft rental that is subject to sales tax.

Taxpayer, in providing "dual flight time," is charging its customers for "unitary transactions" by combining an aircraft rental charge that is subject to sales tax with flight instruction services in one price. See IC § 6-2.5-1-1(a) (defining a unitary transaction as a transaction that "includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated").

[45 IAC 2.2-1-1](#)(a) states:

For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

Since Taxpayer's customers rented an aircraft in a unitary transaction which included the cost of the aircraft and Taxpayer's instruction fees in one price, the entire transaction is subject to sales tax. As explained by [45 IAC 2.2-1-1](#)(a), sales tax applies to the total combined charge irrespective of the fact that services which would not otherwise be taxable are included in the charge. Therefore, to the extent the instruction service charges are not separately stated from aircraft rental charges and represent a unitary transaction, the instruction service charges are subject to sales tax.

FINDING

Taxpayer's protest is denied in part and sustained in part subject to the findings of a supplemental audit.

II. Sales and Use Tax—Imposition.

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer asserts that certain of the items purchased were "purchases for resale" and are exempt from sales and use tax.

IC § 6-2.5-5-8(b) provides:

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.

[45 IAC 2.2-5-15](#) 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, rental 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 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.

Accordingly, purchases made for resale in the regular course of the taxpayer's business are exempt from sales and use tax.

Taxpayer buys pilot supplies, including flight logs and aviation maps, from four vendors. Taxpayer sells certain pilot supplies to pilots and flight students. During the course of the protest, Taxpayer provided sales invoices and other documentation demonstrating that it resold certain of its purchases, collected sales tax on those sales, and remitted sales tax to the Department on those sales. Pursuant to IC § 6-8.1-5-1(c), Taxpayer has met its burden of demonstrating that its purchases from certain vendors were made for resale. Therefore, Taxpayer's protest, as it relates to purchases from these four vendors, is sustained subject to the findings of a supplemental audit.

FINDING

Taxpayer's protest is sustained subject to the findings of a supplemental audit.

CONCLUSION

In summary, Taxpayer's protest of Issue I is denied in part with regard to the "consumable items" and sustained in part with regard to the "non-consumable items" subject to the findings a supplemental audit; Taxpayer's protest of Issue II is sustained subject to the findings of a supplemental audit.

Posted: 03/25/2009 by Legislative Services Agency
An [html](#) version of this document.