

**Letter of Findings: 09-0005
Sales and Use Tax
For the Year 2005**

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ISSUES

I. Sales and Use Tax – Imposition on Aircraft Purchase.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-1-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-5-8; IC § 6-6-6.5-8(d); [45 IAC 2.2-5-15](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax. Ct. 2007); Rotation Products Corp. v. Dep't of State Revenue, 690 N.E.2d 795 (Ind. Tax Ct. 1998).

Taxpayer protests denial of rental exemption and subsequent imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer, a single member LLC in Indiana, purchased a new aircraft for \$447,090 in March 2005. Taxpayer did not pay sales tax on the purchase, claiming it was entitled to an exemption because its business is rental or leasing this aircraft to others. Pursuant to an investigation, the Indiana Department of Revenue ("Department") assessed Taxpayer use tax on the purchase price of the aircraft. Taxpayer protested the assessment. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Imposition on Aircraft Purchase.

DISCUSSION

Pursuant to an investigation, the Department assessed use tax on the purchase price of Taxpayer's aircraft because Taxpayer did not pay sales tax at the time of purchase. Taxpayer claimed that it is in the business of renting and leasing the aircraft, and, therefore, it was entitled to exemption from the sales and/or use tax on the purchase of the aircraft.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-2.5-2-1 provides:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-3-2(a) provides:

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.

Accordingly, Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. An exemption from the use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4.

IC § 6-6-6.5-8(d) provides for the payment of sales or use tax on an aircraft, 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.

Taxpayer claimed that its use of the aircraft qualified for an exemption. Therefore, Taxpayer did not pay the sales or use tax at the time of purchase. Taxpayer argued that its purchase of this aircraft met the rental to others exemption pursuant to IC § 6-2.5-5-8(b).

IC § 6-2.5-5-8(b) states:

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 his business without changing the form of the property.

[45 IAC 2.2-5-15](#) further explains, as follows:

- (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.

In general, tax exemptions are strictly construed against taxpayer. *Rotation Products Corp. v. Dep't of State Revenue*, 690 N.E.2d 795, 798 (Ind. Tax Ct. 1998). When a taxpayer claims it is entitled to a tax exemption, it bears the burden of proving its entitlement to the exemption. *Id.* Here, Taxpayer's aircraft is properly titled, registered, and insured. However, to complete its underwriting, the insurance company had sent Taxpayer a Holding Company Questionnaire ("Questionnaire"), containing three questions. Taxpayer answered all three questions in the Questionnaire, which it signed, and dated March 25, 2005. The excerpts are as follows:

Holding Company Questionnaire

Must be reviewed and signed by an officer/partner of the holding company

Please fill in all sections, do not leave any blanks

Insured/applicant: [Taxpayer's name]

...

2) Does the holding company have any business purpose other than the ownership of the aircraft? If so, please give details.

No.

3) We will allow payment to the holding company for the use of the aircraft, but ONLY by the executive officers or general partners of the holding company OR a directly related business entity that they own the controlling interest in. Controlling interest means an ownership interest of 50 [percent] or more.

A) (X) I confirm that there is no payment by any person or business entity to the holding company outside of these limitations.

B) () Other people or companies are paying for the use of the aircraft. Complete details and their relationship to the holding company, and its owners, are as follows:

Taxpayer first indicated that it was the sole owner of the aircraft. Noticeably, the second question of the Questionnaire asked "Does [Taxpayer] have any business purpose other than the ownership of the aircraft? If so, please give details." Taxpayer answered "NO." None of its business purposes, including renting or leasing the aircraft in question to others, was mentioned. Finally, in response to the third question, Taxpayer checked that "I confirm that there is no payment by any person or business entity to [Taxpayer] outside of these limitations." Taxpayer did not choose option "B" which states that "[o]ther people or companies are paying for the use of the aircraft." Taxpayer clearly purchased this aircraft with the intent "to consume or use" it for itself. Taxpayer did not indicate an intent to rent or lease the aircraft in question to others as Taxpayer subsequently argued when the Department assessed Taxpayer the use tax on the purchase price of the aircraft.

To show that it is occupationally engaged in renting or leasing this aircraft in the regular course of its business, Taxpayer provided several "Aircraft Hourly Rental Agreements" (Rental Agreements). Among the Rental Agreements, the majority of the lessees are also owned by the sole member of Taxpayer. Taxpayer charged the lessees \$100-\$165 per hour for the same aircraft, but Taxpayer did not provide documentation showing that the various charges for the same aircraft are reasonable. Additionally, a business generally is profit-driven. Other indications that Taxpayer is in the business of renting or leasing the aircraft are absent. For example, Taxpayer did not advertise or otherwise promote its business. It raises a reasonable question whether Taxpayer is occupationally engaged in renting or leasing this aircraft in the ordinary course of its business.

IC § 6-2.5-5-8(e) provides, as follows:

This subsection applies only after June 30, 2008. A transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from the state gross retail tax unless the person establishes, under guidelines adopted by the department in the manner provided in [IC 4-22-2-37.1](#) for the adoption of emergency rules, that the annual amount of the lease revenue derived from

leasing the aircraft is equal to or greater than:

- (1) ten percent (10 [percent]) of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was less than one million dollars (\$1,000,000); or
- (2) seven and five-tenths percent (7.5 [percent]) of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was at least one million dollars (\$1,000,000).

While this statute was not yet in effect for a 2005 aircraft purchase, it is a useful guide of what constitutes reasonable annual rental revenue for a person occupationally engaged in renting or leasing an aircraft. Here, the purchase price of Taxpayer's aircraft was \$447,090. As provided by IC § 6-2.5-5-8(e)(2), after June 30, 2008, the annual amount of lease revenue that Taxpayer derives from the leasing of the aircraft would need to be equal or greater than ten percent (10 [percent]) of the original cost or the book value of the aircraft, if the original cost of the aircraft was less than one million dollars (\$1,000,000), in order for Taxpayer to qualify for the exemption; i.e., a minimum of \$44,709. Thus, Taxpayer would have needed to generate \$33,531 in sales for 2005 and \$44,709 in sales for both 2006 and 2007 to qualify for the sales tax exemption on the purchase of the aircraft. Taxpayer generated \$11,840 in sales in 2005, \$20,265 in sales in 2006, and \$33,767 in sales in 2007.

Therefore, based upon all the evidence presented, the Department is unable to conclude that Taxpayer 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). Thus, Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

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