DEPARTMENT OF STATE REVENUE
Information Bulletin #76
Sales Tax
September 2009
(Replaces Information Bulletin #76 dated October 2008)

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SUBJECT: Determination of Sales Tax for Flight Instruction and for Leased Aircraft

EFFECTIVE DATE: January 1, 2008

REFERENCES: IC 6-2.5-4-16 and IC 6-2.5-5-8

INTRODUCTION

HEA 1125-2008 SECTION 8 added IC 6-2.5-4-16 effective July 1, 2008, to provide guidelines for the implementation of sales tax on the lease of aircraft when the aircraft is used to provide flight instruction. SEA 500-2007 SECTION 13 and HEA 1001-2009(ss) SECTION 176 amended IC 6-2.5-5-8 effective January 1, 2008, to provide guidelines for when a person acquires an aircraft for leasing and the provisions for whether the person qualifies for the rental exemption.

FLIGHT INSTRUCTION

IC 6-2.5-4-16 clarifies the taxability of the lease or rental of an aircraft when it is combined with a flight instructor's services to provide in-flight training to a student pilot.

If the instructor leases or rents an aircraft to the student and provides flight instruction to the student during the term of the lease or rental, the gross retail income that is subject to the sales tax is the amount charged by the instructor for the lease or rental of the aircraft used in conjunction with the flight instruction services provided to the student pilot. Any charges related to the instructor's service of instructing the student are exempt from the sales tax if the lease or rental of the aircraft and the charge for the instructor's services are separately stated.

ACQUISITION OF AIRCRAFT FOR RENTAL OR LEASING AND QUALIFICATION FOR EXEMPTION

IC 6-2.5-5-8, effective January 1, 2008, provides that a person who acquires an aircraft for rental or leasing in the ordinary course of the person's business is not automatically exempt from the sales tax as a purchase acquired for rental or leasing.

A purchaser of an aircraft for rental or leasing must meet certain requirements before the purchase is exempt from the sales/use tax. An exemption will be granted on the purchase of the aircraft if the annual revenue derived from renting or leasing the aircraft is equal to or greater than 7.5% of the net acquisition price for the aircraft or the book value of the aircraft as published in the Vref Aircraft Value Reference (VAVR) guide for the aircraft.

If an aircraft is acquired below the VAVR guide book value, the person may appeal to the Indiana Department of Revenue (the Department) for a lower lease or rental threshold equal to the actual acquisition price paid if the person demonstrates that the transaction was completed in a commercially reasonable manner based on the aircraft's age, condition, and equipment.

PRORATING REVENUE

If the aircraft is placed in service on a date other than the first day of the month, and on or before the fifteenth day of the month, the aircraft will be considered to be placed in service on the first day of the month. If the aircraft is placed in service after the fifteenth day of the month, the aircraft will be considered to be placed in service on the first day of the subsequent month.

If the aircraft is taken out of service for nonroutine maintenance, repair, refurbishment, or remanufacture of the aircraft, the time that the aircraft is out of service will not be used to compute the annual revenue necessary to be exempt from the sales/use tax, but rather the 7.5% revenue requirement will be prorated for the balance of the year.

EXAMPLE: An aircraft was purchased for $2 million, and the aircraft was acquired for rental and leasing. The minimum annual revenue that must be generated to maintain the sales/use tax exemption is $150,000. The aircraft is taken out of service for 90 days for refurbishing and other maintenance. The adjusted minimum annual revenue is equal to.75x (150,000 x.75) to qualify for the sales/use tax exemption. The lessor will be required to generate $112,500 in annual revenue to qualify for the sales/use tax exemption.

REMITTANCE OF SALES TAX

A person is required to meet the 7.5% revenue requirement until the earlier of the date the aircraft has generated sales tax on leases or rental income that equals the amount of the original sales tax exemption, or the elapse of 13 years. If the aircraft is sold before meeting the requirements above, the sale of the aircraft shall not result in the assessment of sales tax from the date of acquisition to the date of the sale.

The person is required to remit the sales tax on taxable lease and rental transactions no matter how long the aircraft is used for lease and rental.

ANNUAL REPORT

The lessor of the aircraft shall annually report to the Aeronautics Section of the Tax Administration Division of the Department of Revenue. The report shall be due annually 30 days after the end of the month in which the aircraft was originally placed in service for leasing.

The report shall include the name, address, and phone number of the lessor and the location of the aircraft when it is not in operation. The report must also include the year, make, model, and N number of the aircraft along with the original cost and VAVR book value of the aircraft. The lessor shall report the total revenue from taxable leases, the amount of sales tax collected, the total revenue from exempt leases, and the total revenue from leases to related parties.

FAILURE TO QUALIFY FOR EXEMPTION

If a person engaged in the business of leasing an aircraft does not meet the minimum annual revenue amount for the lease of the aircraft, the person will be subject to the sales/use tax that would have been originally due based on the original cost or VAVR book value of the aircraft.

All use of the aircraft must be charged a lease or rental fee plus sales tax, including related parties.

PUBLIC TRANSPORTATION

A person who acquires an aircraft to rent or lease to another person for predominate use in public transportation by the other person is exempt from sales or use tax. To maintain the public transportation exemption, the taxpayer must submit an annual report documenting predominant use in public transportation.

John Eckart
Commissioner

Posted: 10/28/2009 by Legislative Services Agency
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