

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2009-14 ST
October 9, 2009

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

Sales Tax – Aircraft Painting Services and Supplies

A company ("Taxpayer") is seeking an opinion as to whether aircraft painting services and the purchases of supplies used as part of those services are subject to Indiana sales tax.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-5](#); [IC 6-2.5-5-24\(a\)](#); [IC 6-2.5-5-27](#); [IC 6-2.5-8-1](#); [IC 6-2.5-8-8](#); [45 IAC 2.2-5-61\(b\)](#); [45 IAC 2.2-5-61\(c\)](#); [45 IAC 2.2-5-61\(d\)](#); [45 IAC 2.2-5-61\(h\)\(1\)](#).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer is a company that paints and performs related maintenance services on aircraft. In pertinent part, Taxpayer further provides:

[Taxpayer] will provide painting services to the airlines industry, the Department of Defense, and the corporate sector (both public and private companies), specifically prepare the aircraft for painting and paint the aircraft and provide related maintenance services related to these tasks.

Taxpayer specifically asks the following questions:

1. If [Taxpayer] provides services whereby the company prepares aircraft for painting and paints aircraft for a particular customer, must [Taxpayer] charge and must the customer pay the state gross retail tax for the following type of customers?
 - a. Airlines industry
 - b. Department of Defense
 - c. Corporate sector
 - i. Publicly held companies
 - ii. Privately held companies
 - iii. Individuals
 - d. Must the company obtain the Indiana general exemption certificate, form ST-105?
 - e. Will the tax exemptions apply equally to the airlines industry, Department of Defense, corporate sector, and private individuals?
2. In providing the above services, if [Taxpayer] was to purchase supplies, tools, equipment, and materials in Indiana used directly in preparing the aircraft for painting, painting the aircraft, would these purchases be exempt from the state gross retail tax?
3. What filing requirements must the company comply with in order to do business in the State of Indiana?

DISCUSSION

In general, [IC 6-2.5-2-1\(a\)](#) imposes sales tax on retail transactions made in Indiana. However, some transactions are exempt from sales tax. [IC 6-2.5-5](#) et seq. With regard to such exempt transactions, an exempt purchaser and a retail merchant have a shared responsibility. The retail merchant is required to charge and collect sales tax; the exempt purchaser must demonstrate to the retail merchant that it qualifies not to have sales tax imposed. A retail merchant is required to collect and remit sales tax pursuant to [IC 6-2.5-2-1](#). An exempt purchaser is required by [IC 6-2.5-8-8](#) to provide a retail merchant with a "proper exemption certificate" prescribed by the Department.

The Indiana General Sales Tax Exemption Certificate Form ST-105 is the proper exemption certificate with which entities may purchase items exempt. The exemption certificate contains several exemption categories that may be declared. One such category available is for purchasers engaged in public transportation. [IC 6-2.5-5-27](#) provides the following exemption from sales tax for transactions involving public transportation:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for

persons or property.

Public transportation is defined at [45 IAC 2.2-5-61\(b\)](#), which provides:

Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

In order to qualify for a public transportation exemption, the tangible personal property and/or services at issue "must be reasonably necessary to the rendering of public transportation." [45 IAC 2.2-5-61\(c\)](#). The following items are reasonably necessary to the rendering of public transportation: vehicles used for public transportation, items used for repairs and maintenance of such vehicles, equipment and items purchased to meet federal requirements, items used to keep vehicles clean and safe for the passengers, and cleaning supplies. [45 IAC 2.2-5-61\(d\)](#). Also reasonably necessary to the rendering of public transportation are: "[m]achinery, tools, equipment, and facilities used for repair and maintenance of tangible personal property directly used in public transportation..." [45 IAC 2.2-5-61\(h\)\(1\)](#). However, in order for the exemption to apply, the entity acquiring otherwise exempt tangible personal property or services must use such exempt items or services directly in public transportation that it provides.

Another exempt category listed on the Form ST-105 is for purchases made by the United States Federal Government. [IC 6-2.5-5-24\(a\)](#) states that transactions with the United States government are exempt from sales tax to the extent the state is prohibited by the Constitution of the United States from taxing that gross income. The effect of the provision is that federal government purchases generally are exempt from sales tax.

Whether the purchaser is an airline, a government entity, or a corporate sector company, sales tax is due at the time of the purchase unless the purchaser presents Taxpayer with a completed exemption certificate claiming a valid exemption. Once presented with a completed exemption certificate, Taxpayer "has no duty to collect or remit the state gross retail or use tax on that purchase." [IC 6-2.5-8-8\(a\)](#). The exemption applies equally to all qualifying entities.

Based on the foregoing, Taxpayer's sales of its painting services, including preparation, to public transportation companies and the federal government are exempt from Indiana sales tax. The exemption does not extend to Taxpayer's purchases of paint, consumable materials, tools, equipment and/or workspace used in its painting services, even if such items will be used by Taxpayer as part of exempt services offered to companies engaged in public transportation. While such items might be exempt from sales tax if acquired by an entity engaged in public transportation, the exemption does not transfer from such an entity to Taxpayer.

The Department is without sufficient information to make a determination as to the other purchaser categories contained in Taxpayer's request for a ruling. However, the rule is the same for all companies: in order for Taxpayer to be relieved of the duty to collect sales tax, a qualifying purchaser must present Taxpayer with a completed exemption certificate (Form ST-105) claiming a valid exemption. [IC 6-2.5-8-8](#). Only a sales tax exemption certificate documents to a retail merchant that the transaction by the purchaser is exempt from the sales tax and relieves the retail merchant from the statutory obligation to collect sales tax from the purchaser.

In order to operate as a retail merchant or to purchase items exempt in Indiana, a taxpayer must apply for and obtain a Registered Retail Merchant's Certificate from the Department. [IC 6-2.5-8-1](#). The Registered Retail Merchant's Certificate will have a number that must be used on all exemption certificates given to vendors by the exempt taxpayer. Exemption certificates may be used either as a blanket exemption, kept on file by the vendor, or for each individual transaction. A blanket exemption certificate tells the vendor that all purchases made by the taxpayer will be used in an exempt manner.

RULING

Taxpayer must charge, and its customers must pay, sales tax for all retail transactions it conducts in Indiana, unless Taxpayer is presented with a completed exemption certificate. Painting services provided by Taxpayer to

companies involved in public transportation are exempt from sales tax. Taxpayer's purchases of paint, supplies, and materials used directly in preparing the aircraft for painting or for painting the aircraft, including consumable materials, tools, equipment and/or workspace, are subject to Indiana sales tax. In order to engage in business in Indiana, Taxpayer must apply for and obtain a Registered Retail Merchant Certificate from the Department.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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