

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

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ISSUE

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

Authority: IC § 6-8.1-5-1; IC § 6-2.5-1-1 et seq.; 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 renting 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 imposition of the tax. After an administrative hearing, the Department issued Letter of Findings 09-0005 which denied Taxpayer's protest. Taxpayer timely requested a rehearing to present additional documentation. Taxpayer's request was granted, the documentation was reviewed, and this Supplemental Letter of Findings results. Additional facts will be provided as necessary.

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

DISCUSSION

The Letter of Findings 09-0005 concluded that Taxpayer was not in the business of renting and leasing the aircraft, and, therefore, it was not entitled to exemption from the sales and/or use tax on the purchase of the aircraft. Taxpayer, to the contrary, claimed that it was 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).

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 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. Additionally, in certain circumstances, exemptions from sales and use tax are available.

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.

At the rehearing, Taxpayer argued that the Questionnaire was not relevant to whether Taxpayer was in the business of renting and leasing the aircraft. Taxpayer further maintained that even if the insurance company discovered that Taxpayer intentionally or unintentionally misinformed the insurance company, the newly discovered facts would only give the insurance company the power to rescind the contract and nothing more. Taxpayer thus argued that the only consequence to Taxpayer would have been losing coverage for its aircraft and nothing more. Taxpayer also claimed that, despite the fact that the Questionnaire stated otherwise, the insurance company had knowledge that Taxpayer was in the business of renting and leasing the aircraft to unrelated third parties and continued to insure Taxpayer's aircraft.

The Department must respectfully disagree with Taxpayer's arguments. Taxpayer failed to substantiate its claim concerning the Questionnaire. Here, the Questionnaire was to show Taxpayer's intent, one of the factors under [45 IAC 2.2-5-15\(c\)\(1\)](#), when it applied for the exemption after its purchase. Taxpayer, in writing, affirmatively stated "the holding company [does not] have any business purpose other than the ownership of the aircraft" and "confirm[ed] that there is no payment by any person or business entity to the holding company outside of these limitations." Taxpayer claimed that the answer to the Questionnaire was not its true intent, but Taxpayer failed to prove otherwise on rehearing of Taxpayer's protest. The issue in this protest is whether Taxpayer had an intent to rent or lease the aircraft when it purchased the aircraft. It is not relevant to this protest whether the insurance company knew that Taxpayer was in the business of renting or leasing the aircraft and continued to insure the aircraft. If, as it claimed, Taxpayer changed its mind and intended to enter the business of renting or leasing the aircraft, Taxpayer did not provide any documentation to reflect the changes. Without

sufficient documentation to substantiate its claim, the Questionnaire, in writing, clearly stated that Taxpayer did not intend to rent or lease 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.

At the rehearing, Taxpayer submitted copies of advertisements from several flight schools and air centers. Taxpayer argued that its charges, \$100-\$165 per hour, were fair and reasonable. Additionally, Taxpayer stated that some lessees rented the aircraft more often than other lessees and, therefore, Taxpayer agreed to a discounted rate for the rental charges. Although Taxpayer submitted copies of invoices and checks paid to Taxpayer for the use of aircraft, Taxpayer's documentation did not show a reasonable rationale on the various charges for the same aircraft.

Therefore, based upon all the evidence presented, the Department is unable to conclude that Taxpayer has met its burden showing it 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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