

**Letter of Findings Number: 99-20100576
Aircraft License Excise Tax
For Tax Year 2010**

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ISSUE

I. Aircraft License Excise Tax—Imposition.

Authority: IC § 6-6-6.5-2; IC § 6-6-6.5-9; IC § 6-6-6.5-12; IC § 6-8.1-5-1.

Taxpayer protests the imposition of aircraft license excise tax on an aircraft.

STATEMENT OF FACTS

Taxpayer is an out-of-state resident. Taxpayer rented hangar space at an Indiana airport. After a review of its records, the Indiana Department of Revenue ("Department") determined that Taxpayer had not registered the aircraft in Indiana and therefore owed Indiana aircraft license excise tax, aircraft license excise tax late payment penalty, interest, and the registration fee. The Department did not issue proposed assessments for sales or use taxes. Taxpayer protests the imposition of all taxes, fees, interest, and penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Aircraft License Excise Tax—Imposition.

Taxpayer protests the imposition of aircraft license excise tax on the aircraft in question. The Department determined that the excise tax and registration fee were due after learning that Taxpayer rented hangar space at an Indiana airport. Taxpayer protests that he did not base the aircraft in Indiana, but only rented the hangar space for the times when he flew the aircraft into Indiana to visit family members. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department based its determination on the information it received in the course of routine reporting procedures and on IC § 6-6-6.5-2, which states:

- (a) Except as otherwise provided in this chapter, any resident of this state who owns an aircraft shall register the aircraft with the department not later than thirty-one (31) days after the purchase date.
- (b) Except as otherwise provided in this chapter, any nonresident who bases an aircraft in this state for more than sixty (60) days shall register the aircraft with the department under this chapter not later than sixty (60) days after establishing a base in Indiana.
- (c) Except as otherwise provided in this chapter, an Indiana resident who owns a homebuilt aircraft shall register the aircraft with the department not later than thirty-one (31) days after the date the Federal Aviation Administration has issued the certificate of registration and air worthiness certificate for the aircraft.
- (d) Notwithstanding subsection (b), if a nonresident bases an aircraft in Indiana with a dealer or repair station solely for repairing, remodeling, or refurbishing the aircraft, neither the nonresident nor the dealer or repair station is required to register the aircraft with the department under this chapter. However, the dealer or repair station shall file a report with the department the month after the end of each calendar quarter. The report must list only:
 - (1) the name and address of the dealer or repair station;
 - (2) either:
 - (A) the dealer's certification number; or
 - (B) the repair station's certificate number; and
 - (3) the N number of each aircraft that was based in this state for more than sixty (60) days during the preceding quarter.(Emphasis added).

The Department also relied on IC § 6-6-6.5-12, which states:

- (a) Effective January 1, 1976, there is hereby imposed an annual license excise tax upon taxable aircraft, which tax shall be in lieu of the ad valorem property tax levied for state or local purposes. No taxable aircraft shall be assessed as personal property for the purpose of the assessment and levy of personal property or shall be subject to ad valorem taxes, beginning with taxes for the year of 1975 payable in 1976 and thereafter.
- (b) Eligibility of aircraft for a deduction under [IC 6-1.1-12.3](#) does not exempt a taxpayer from the tax imposed under this chapter on the aircraft.

Also of relevance is IC § 6-6-6.5-9, which states in relevant part:

- (a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following:
 - (1) An aircraft owned by and used exclusively in the service of:

- (i) the United States government;
- (ii) a state (except Indiana), territory, or possession of the United States;
- (iii) the District of Columbia; or
- (iv) a political subdivision of an entity listed in clause (i), (ii), or (iii).

(2) An aircraft owned by a resident of another state and registered in accordance with the laws of that state. However, the aircraft shall not be exempt under this subdivision if a nonresident establishes a base for the aircraft inside this state and the base is used for a period of sixty (60) days or more.....

(Emphasis added).

As part of the protest process, Taxpayer provided substantial documentation establishing that the aircraft in question was in Indiana for less than sixty days in the tax year 2010 and that the aircraft was properly registered in Taxpayer's home state. The aircraft was therefore not subject to the aircraft excise tax or registration requirements, as provided by IC § 6-6-6.5-9(a)(2). Taxpayer has met his burden of proving the proposed assessments incorrect, as provided by IC § 6-8.1-5-1(c). Taxpayer does not owe aircraft license excise tax, penalty, interest, or registration fee for the tax year 2010.

FINDING

Taxpayer's protest is sustained.

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