

**Letter of Findings: 04-20100696
Sales and Use Tax
For the Year 2008**

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ISSUE

I. Sales and Use Tax – Aircraft.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-5-8.

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

STATEMENT OF FACTS

Taxpayer is an LLC that purchased an aircraft. Taxpayer purchased the aircraft in September of 2008 for \$586,500. In correspondence to Taxpayer, the Department noted that Taxpayer had filed an application "claim[ing] an exemption from sales/use because you are a registered retail merchant in the business of renting and leasing the aircraft...." The Department denied Taxpayer's claim for exemption. Taxpayer in turn filed a protest of the denial. A hearing was held, and this Letter of Findings ("LOF") results. Additional facts will be provided as necessary.

I. Sales and Use Tax – Aircraft.

DISCUSSION

At the outset, 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).

Turning to the law regarding sales and use tax, 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.

And 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.

Thus 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. Also of relevance is IC § 6-2.5-3-4, which states:

- (a) The storage, use, and consumption of tangible personal property in Indiana is exempt from the use tax if:
 - (1) the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property; or
 - (2) the property was acquired in a transaction that is wholly or partially exempt from the state gross retail tax under any part of [IC 6-2.5-5](#), except [IC 6-2.5-5-24](#)(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.
- (b) If a person issues a state gross retail or use tax exemption certificate for the acquisition of tangible personal property and subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person shall pay the use tax.

Turning to Taxpayer's argument, Taxpayer in correspondence to the Department states that it "purchased the aircraft on September 24, 2008, exclusively for short-term lease to others and pays sales tax on the fair market value of the lease." Taxpayer asserts that it has "properly collected and remitted sales tax based on the 10[percent] minimum annual lease revenue amount required by the leases and [IC 6-2.5-5-8](#)(e) by filing its quarterly sales and use tax return...."

As noted above, Taxpayer refers to IC § 6-2.5-5-8. The statute currently states:

- (a) As used in this section, "new motor vehicle" has the meaning set forth in [IC 9-13-2-111](#).
- (b) 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 the person's business without changing the form of the property.
- (c) The following transactions involving a new motor vehicle are exempt from the state gross retail tax:
 - (1) A transaction in which a person that has a franchise in effect at the time of the transaction for the vehicle trade name, trade or service mark, or related characteristics acquires a new motor vehicle for resale, rental, or leasing in the ordinary course of the person's business.
 - (2) A transaction in which a person that is a franchisee appointed by a manufacturer or converter

manufacturer licensed under [IC 9-23](#) acquires a new motor vehicle that has at least one (1) trade name, service mark, or related characteristic as a result of modification or further manufacture by the manufacturer or converter manufacturer for resale, rental, or leasing in the ordinary course of the person's business.

(3) A transaction in which a person acquires a new motor vehicle for rental or leasing in the ordinary course of the person's business.

(d) The rental or leasing of accommodations to a promoter by a political subdivision (including a capital improvement board) or the state fair commission is not exempt from the state gross retail tax, if the rental or leasing of the property by the promoter is exempt under [IC 6-2.5-4-4](#).

(e) This subsection applies only to air craft acquired after June 30, 2008. Except as provided in subsection (h), 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 gross lease revenue derived from leasing or rental of the aircraft, which may include revenue from related party transactions, is equal to or greater than seven and five-tenths percent (7.5[percent]) of the:

- (1) book value of the aircraft, as published in the Vref Aircraft Value Reference guide for the aircraft; or
- (2) net acquisition price for the aircraft.

If a person acquires an aircraft below the Vref Aircraft Value Reference guide book value, the person may appeal to 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. The department may request the person to submit to the department supporting documents showing the aircraft is available for general public lease or rental, copies of business and aircraft insurance policies, and other documents that assist the department in determining if an aircraft is exempt from the state gross retail tax.

(f) A person is required to meet the requirements of subsection (e) until the earlier of the date the aircraft has generated sales tax on leases or rental income that is equal to the amount of the original sales tax exemption or the elapse of thirteen (13) years. If the aircraft is sold by the person before meeting the requirements of this section and before the sale the aircraft was exempt from gross retail tax under subsection (e), the sale of the aircraft shall not result in the assessment or collection of gross retail tax for the period from the date of acquisition to the date of sale by the person.

(g) The person is required to remit the gross retail tax on taxable lease and rental transactions no matter how long the aircraft is used for lease and rental.

(h) This subsection applies only to aircraft acquired after December 31, 2007. A transaction in which a person acquires an aircraft to rent or lease the aircraft to another person for predominant use in public transportation by the other person or by an affiliate of the other person is exempt from the state gross retail tax. The department may not require a person to meet the revenue threshold in subsection (e) with respect to the person's leasing or rental of the aircraft to receive or maintain the exemption. To maintain the exemption provided under this subsection, the department may require the person to submit only annual reports showing that the aircraft is predominantly used to provide public transportation.

(i) The exemptions allowed under subsections (e) and (h) apply regardless of the relationship, if any, between the person or lessor and the lessee or renter of the aircraft.

(Emphasis added).

Thus, as can be seen from the statute, the "annual amount of the gross lease revenue derived from leasing or rental of the aircraft" can "include revenue from related party transactions...." In the present case the aircraft was acquired after June 30, 2008 (it was acquired in September 2008). The purchase price of the aircraft was \$586,500. Therefore, under the statute, Taxpayer's leasing or rental income per year needed to be approximately \$44,000 per year (approximately \$3,667 a month). Taxpayer in correspondence notes the following:

Monthly amount of lease revenue (\$58,650 / 12 months) \$4,887.50

Taxpayer also states that its "September pro-rated lease revenue" was "\$1,303.33." The annual rent calculation formula in the lease is over the \$3,667 amount. Finally, Taxpayer notes that it remitted sales tax on the lease stream to the Department.

Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c) and therefore is qualified for the rental exemption. Additionally, the Department notes that the Proposed Assessment shows that Taxpayer was assessed a penalty. Since Taxpayer is sustained regarding its protest of the rental exemption, there is no penalty to impose against Taxpayer.

FINDING

Taxpayer's protest is sustained.

Posted: 09/28/2011 by Legislative Services Agency

