

**Letter of Findings: 04-20100704
Sales/Use Tax
For the Year 2010**

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ISSUE

I. Sales/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; Sales Tax Information Bulletin 76 (September 2009).

Taxpayer protests the proposed assessment on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer, an LLC, acquired an aircraft in March of 2010. Taxpayer claimed the rental/leasing exemption for the aircraft. Shortly after it acquired the aircraft, Taxpayer sold the aircraft in question. The Department issued a Proposed Assessment for unpaid tax. Taxpayer in turn filed a protest. A hearing was held, and this Letter of Findings ("LOF") results. Additional facts will be provided as necessary.

I. Sales/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 applicable law, IC § 6-2.5-2-1 deals with the "gross retail tax" (also known as the sales tax):

- (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) deals with use tax:

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.

Indiana thus 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.

The Department also refers to IC § 6-2.5-5-8. The relevant portion of the statute currently states:

- (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).

Taxpayer provided the Department with a written timeline. The timeline states that in 2008 Taxpayer purchased an aircraft, hereinafter referred to as "Aircraft A." Aircraft A was purchased "for the purpose of leasing the aircraft to other parties." Taxpayer further states that from July 2008 until March 2010 "rent for 20 months was booked by the Company as lessor []." Taxpayer states that it traded in the Aircraft A for another aircraft (hereinafter referred to as "Aircraft B"). Taxpayer states, "The Company, as lessor, and the lessees amended their lease agreements...." Taxpayer then notes, "From the lease inception date of March 15, 2010 through the sale date of April 20, 2010, rent for two months was booked by Company as lessor []." Taxpayer's timeline then states:

Ultimately, the Company determined that [Aircraft B] was not the right aircraft for the Company's leasing activity, so [Aircraft B] was sold to [Company L] on April 20, 2010.

Taxpayer subsequently purchased a third aircraft, for which "rent for three months was booked by the Company as lessor for the remainder of 2010 []." At issue is Aircraft B.

As previously noted, IC § 6-2.5-5-8(f) states in pertinent part:

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.

Also, Sales Tax Information Bulletin 76 (September 2009), 20091028 Ind. Reg. 045090848NRA, states in relevant part:

A person is required to meet the 7.5[percent] 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.

Taxpayer acquired Aircraft B in a transaction exempt under IC § 6-2.5-5. Taxpayer owned Aircraft B for approximately six weeks. Taxpayer remitted sales tax on the lease income. Taxpayer subsequently sold Aircraft B, and the sale meets the requirements of IC § 6-2.5-5-8(f). Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c), and therefore its protest is sustained. Additionally, the Department notes that the Proposed Assessment shows that Taxpayer was assessed a penalty. Since Taxpayer is sustained regarding its protest, there is no penalty to impose against Taxpayer.

FINDING

Taxpayer's protest is sustained.

Posted: 09/28/2011 by Legislative Services Agency
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