

**Letter of Findings: 04-20110339**  
**Aircraft License Excise Tax and Sales/Use Tax**  
**For Tax Year 2011**

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**ISSUES**

**I. Aircraft License Excise Tax – Imposition.**

**Authority:** IC § 6-6-6.5-1; IC § 6-6-6.5-2; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer asserts that it has no reason or justification for payment of registration in Indiana.

**II. Sales and Use Tax – Imposition.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Rhoades v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993).

Taxpayer asserts that it has no reason or justification for payment of sales/use tax in Indiana.

**III. Tax Administration – Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the ten-percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a Delaware corporation having only one shareholder/member. Taxpayer purchased an aircraft and has been using one of the Indiana airports as its base to park or store its aircraft. Pursuant to an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer failed to properly register its aircraft as required by the Indiana law and failed to pay the aircraft license excise tax. The Department's audit also determined that Taxpayer did not pay sales tax at the time of its purchase of the aircraft or self-assess and remit the use tax accordingly. As a result, the Department assessed Taxpayer the aircraft license excise tax, use tax, interest, and penalty.

Taxpayer timely protested the assessments. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results. Further facts will be supplied as required.

**I. Aircraft License Excise Tax – Imposition.**

**DISCUSSION**

The Department's audit assessed Taxpayer excise tax because Taxpayer failed to properly register the aircraft as required. Taxpayer, to the contrary, claimed that it is a Delaware corporation, and, therefore, is not required to register and is not subject to Indiana aircraft license excise tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid 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).

IC § 6-6-6.5-2, in relevant part, further provides:

(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. (**Emphasis added**).

IC § 6-6-6.5-1, in relevant part, states that:

(h) "Resident" means an individual or a fiduciary who resides or is domiciled within Indiana or any corporation or business association which maintains a fixed and established place of business within Indiana for a period of more than sixty (60) days in any one (1) year.

(i) "Taxable aircraft" means an aircraft required to be registered with the department by this chapter.

(m) "Base" means the location or place where the aircraft is normally hangared, tied down, housed, parked, or kept, when not in use.

(p) "Establishing a base" means renting or leasing a hangar or tie down for a particular aircraft for at least thirty-one (31) days.

In this instance, Taxpayer asserted that it is "a Delaware corporation" and "[a]s a Delaware corporation, we see no reason or justification for payment of registration in Indiana." To support its protest, Taxpayer submitted copies of "Unanimous Written Consent to Resolutions by the Incorporator, Sole shareholder, and Sole member of

the Board of Directors," "Certificate of Incorporation," "Stock Certificate," and "By-Laws" demonstrating that it is a Delaware corporation. However, Taxpayer did not dispute the fact that the aircraft at issue is stored in one of the Indiana airports and/or that Taxpayer has established its base – "hangared, tied down, housed, parked [its aircraft] when not in used" – in Indiana. At the administrative hearing, Taxpayer's representative also admitted that Taxpayer's sole member/shareholder is an Indiana resident and the aircraft has established a base in Indiana.

Thus, pursuant to the above Indiana law, since Taxpayer, a Delaware corporation, has established a base in Indiana, it is required to register the aircraft with the Department and pay the required aircraft license excise tax.

#### FINDING

Taxpayer's protest is respectfully denied.

#### II. Sales and Use Tax – Imposition.

#### DISCUSSION

The Department's audit assessed Taxpayer use tax because Taxpayer uses and stores the aircraft in one of the Indiana airports but did not pay sales tax at the time of the purchase or self-assessing and remitting the use tax to the Department. Taxpayer, to the contrary, claimed that it is a Delaware corporation, and, therefore, is not required to pay Indiana sales/use tax.

As mentioned above, all tax assessments are prima facie evidence that the Department's claim for the unpaid 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).

IC § 6-2.5-2-1 states:

(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.

IC § 6-2.5-3-2, in relevant part, provides that:

(a) 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.

(b) **The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:**

**(1) is acquired in a transaction that is an isolated or occasional sale; and**

**(2) is required to be titled, licensed, or registered by this state for use in Indiana. (Emphasis added).**

IC § 6-2.5-3-4 further provides:

(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.

Accordingly, Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called "the use tax" 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." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002). By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Id.*; *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 468–69 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden.

In this instance, Taxpayer claimed that it is not responsible for the Indiana sales/use tax because it is a Delaware corporation. To support its protest, Taxpayer submitted copies of "Unanimous Written Consent to Resolutions by the Incorporator, Sole shareholder, and Sole member of the Board of Directors," "Certificate of Incorporation," "Stock Certificate," and "By-Laws" demonstrating that it is a Delaware corporation. However, upon reviewing Taxpayer's documentation, it did not dispute that the aircraft at issue is stored or used in one of the Indiana airports and its sole shareholder/member is an Indiana resident. Additionally, Taxpayer did not assert that its purchase of the aircraft qualified for any statutory exemptions. Thus, the Department is not able to agree that

Taxpayer has met its burden of proof demonstrating that it is not subject to Indiana sales/use tax.

Pursuant to the above mentioned Indiana law, since Taxpayer did not provide any evidence demonstrating that sales tax was paid on its purchase, the use tax is properly imposed.

**FINDING**

Taxpayer's protest is respectfully denied.

**III. Tax Administration – Negligence Penalty.**

**DISCUSSION**

Taxpayer also protests the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer did not provide sufficient documentation demonstrating that the imposition of the negligence penalty is not appropriate.

**FINDING**

Taxpayer's protest is respectfully denied.

**SUMMARY**

For the reasons discussed above, Taxpayer's protest of the imposition of aircraft license excise tax, sales/use tax, and negligence penalty is respectfully denied.

*Posted: 12/28/2011 by Legislative Services Agency*  
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