

**Letter of Findings: 04-20140321
Sales and Use Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

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

Authority: IC § 6-2.5-1-2; 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 § 6-2.5-4-1; IC § 6-2.5-5-8; IC § 6-6-6.5-2; IC § 6-6-6.5-3; IC § 6-6-6.5-8; 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); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993); Rhoades v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Hyatt Corp. v. Dep't of State Revenue, 695 N.E.2d 1051 (Ind. Tax Ct. 1998); Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-15](#).

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

STATEMENT OF FACTS

Taxpayer, an Indiana LLC, purchased an aircraft for \$4,203,437 in April 2013. The aircraft was hangared in Indiana. Taxpayer did not pay sales tax on the purchase, nor did it register the aircraft at issue with the Indiana Department of Revenue ("Department") within thirty-one (31) days from the purchase date, as required by IC § 6-6-6.5-8.

Early in 2014, in addition to the annual Aircraft License Excise Tax, the Department assessed Taxpayer use tax on the purchase price of the aircraft based on the "best information available." Taxpayer paid the Aircraft License Excise Tax. But, Taxpayer subsequently filed an "Application For Aircraft Registration or Exemption" form, claiming that its purchase was exempt from sales/use tax under IC § 6-2.5-5-8. Taxpayer asserted that it purchased the aircraft at issue for the purpose of leasing this aircraft to others. After reviewing Taxpayer's application, the Department denied its application and made an adjustment of the proposed assessment to reflect the actual sales/use tax pertaining to the actual purchase price of the aircraft at issue.

Taxpayer protested the assessment. A phone hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

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

DISCUSSION

The Department, in determining that Taxpayer was not entitled to the exemption, assessed use tax on the purchase price of Taxpayer's aircraft. The Department found that Taxpayer had neither paid sales tax at the time of purchase, nor properly registered the aircraft and remitted the use tax to the Department.

Taxpayer, to the contrary, claims that it is in the business of renting and leasing the aircraft, and, therefore, its purchase of the aircraft was exempt from the sales and/or use tax under IC § 6-2.5-5-8. Taxpayer specifically asserts that it was entitled to the exemption on the ground that it purchased a 1/3 interest of the aircraft and that it remitted sales tax on the lease revenue, which was calculated based on 1/3 of the purchase price.

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); Indiana Dep't of

State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

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). The use tax is also imposed on the purchase of an aircraft, if the aircraft "is acquired in a transaction that is an isolated or occasional sale" and "is required to be titled, licensed, or registered by this state for use in Indiana." IC § 6-2.5-3-2(b). "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. Rhoades, 774 N.E.2d at 1048; 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. Rhoades, 774 N.E.2d at 1047 - 1050 (explaining that, generally, states impose a use tax to prevent the erosion of the state's tax base when its residents make purchases in other states). To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. IC § 6-2.5-3-2(a); USAir, Inc., 623 N.E.2d at 468. A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b) and (c); IC § 6-2.5-3-2(a) and (b). Additionally, when a transaction involves an aircraft, a person who acquires the aircraft is also required to register the aircraft and pay the excise tax pursuant to IC § 6-6-6.5-2 and IC § 6-6-6.5-3.

An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). There are various tax exemptions available outlined in IC § 6-2.5-5. The legislature enacted the statutory exemptions, such as IC § 6-2.5-5-8, "to mitigate the effect of tax pyramiding." Hyatt Corp. v. Dep't of State Revenue, 695 N.E.2d 1051, 1056 (Ind. Tax Ct. 1998). "Tax pyramiding occurs in the sales and use tax context where a tax is levied upon a tax." Id. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Id. at 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

Taxpayer in this instance purchased the aircraft. The list price of the aircraft at issue was \$4,203,437. Pursuant to IC § 6-6-6.5-8(d), Taxpayer was required to "pay the gross retail tax or use tax to the department [at] . . . the time the aircraft is registered. . . ." IC § 6-6-6.5-8(d)(1). Alternatively, Taxpayer is required to pay the use tax "not later than thirty-one (31) days after the purchase date." IC § 6-6-6.5-8(d)(2). Taxpayer did neither. Only after the Department proposed an assessment based on the best information available, Taxpayer claimed that its use of the aircraft qualified for an exemption pursuant to IC § 6-2.5-5-8. In late February 2014, almost ten (10) months after its purchase, Taxpayer applied for the exemption.

The exemption is outlined in IC § 6-2.5-5-8(b), which states:

Transactions involving tangible personal property . . . 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.

IC § 6-2.5-5-8(e) illustrates the "threshold requirements" for aircraft rentals, as follows:

This subsection applies only to aircraft 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.**

(Emphasis added).

[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.

Taxpayer in this case asserts that it is entitled to the exemption because it acquired the aircraft for the purpose of leasing the aircraft to others. Specifically, Taxpayer argues that it "purchased its [one third] interest in the aircraft for \$1,401,146 (1/3 of \$4,203,437) It remitted tax on 7.5[percent] of the minimum annual revenue amount, using the [1/3] purchase price of the aircraft." Taxpayer thus argues that it has met the Department's guidelines to claim the exemption under IC § 6-2.5-5-8. To support its protest, Taxpayer submits additional documentation, which includes a "Vref Aircraft Valuation," an "Aircraft Purchase Agreement," "Sales and Use Tax Remittances," and an "Aircraft Lease Agreement."

Upon review, however, Taxpayer's reliance on its interpretation of IC § 6-2.5-5-8 is misplaced. To claim the exemption under IC § 6-2.5-5-8, Taxpayer must first acquire the aircraft for rental or leasing in the ordinary course of its business without changing the form of the aircraft. IC § 6-2.5-5-8(b). Additionally, Taxpayer must meet the minimum threshold revenue pursuant to IC § 6-2.5-5-8(e), which states "a transaction . . . is not exempt from the state gross retail tax unless the person establishes . . . 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 . . . ; or (2) net acquisition price for the aircraft." Taxpayer provides no business records, including, such as insurance policies, flight logs, as well as invoices and payments pertaining to the "lease," to substantiate that it is in the business of renting and leasing aircraft. Taxpayer also provides no documentation to demonstrate that it purchased the

aircraft at a lower purchase price and the threshold lease revenue should be reduced. Page one of the Aircraft Purchase Agreement listed three entities as purchaser. However, Taxpayer was the sole purchaser who signed and executed the Purchase Agreement. In the absence of other supporting documentation, the Department is not able to agree that Taxpayer purchased only a 1/3 interest of the aircraft. Thus, the Department properly denied Taxpayer the application of the exemption and assessed the use tax on the total purchase price.

In short, based upon the evidence presented, the Department is unable to conclude that Taxpayer is "occupationally engaged in reselling, renting, or leasing such property in the regular course of [its] business." [45 IAC 2.2-5-15\(b\)\(2\)](#). The Department is also unable to agree that Taxpayer purchased a 1/3 interest of the aircraft. Since Taxpayer did not pay sales tax at the time of the purchase, the use tax is due on the purchase price of \$4,203,437.

Finally, given the totality of the circumstances, in the absence of other supporting documentation, since Taxpayer failed to meet the requirements outlined in IC § 6-2.5-5-8(b) and [45 IAC 2.2-5-15\(b\)\(2\)](#), the Department does not need to address the issue whether Taxpayer should be allowed to remit the sales tax on the lease revenue at 7.5 percent of \$1,401,146 (the 1/3 of \$4,203,437).

FINDING

Taxpayer's protest is respectfully denied.

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