

DEPARTMENT OF STATE REVENUE

04-20140493.LOF

Letter of Findings Number: 04-20140493
Sales/Use Tax
For Tax Year 2014

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the conveniences of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana use tax was owed on an aircraft that was purchased out-of-state and then later brought into Indiana for use.

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 § 6-6-6.5-8; IC § 6-6-6.5-9; IC § 6-2.5-3-4; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of use tax on an aircraft.

II. Tax Administration - Penalty & Interest.

Authority: IC § 6-8.1-10-1; [45 IAC 15-11-2](#).

Taxpayer protests the Department's imposition of a penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. In 2014, the Indiana Department of Revenue ("Department") sent a letter to Taxpayer, which stated that as the owner of an aircraft that Taxpayer was required to register the aircraft with the State of Indiana. The Department issued a proposed assessment of use tax, penalty, interest, and fees regarding the aircraft. Taxpayer protested, and an administrative telephone hearing was conducted. Further facts will be supplied as required below.

I. Sales/Use Tax - Aircraft.**DISCUSSION**

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to an agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Turning to Taxpayer's protest, Taxpayer states that he moved from Kansas to Indiana in late 2013. Taxpayer states that the aircraft at issue was purchased from another individual in 2010 (i.e., while Taxpayer lived in Kansas) and that the aircraft was exempt from Kansas taxes (K.S. 79-220, per Taxpayer). Taxpayer states that

"the Kansas Exemption should 'accompany' the aircraft when I moved from Kansas to Indiana" Taxpayer also believes that IC § 6-1.1-12-13 is applicable to the facts of his protest.

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. IC § 6-2.5-2-1; IC § 6-2.5-3-2.

The use tax statute, IC § 6-2.5-3-2, also states in relevant part:

- (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

Also of importance is IC § 6-6-6.5-8, which states:

- (a) In the event of the sale or transfer of ownership of an aircraft for which a certificate of registration has been issued by the department, the owner in whose name the aircraft is registered shall endorse on the back of the certificate of registration and deliver such certificate to the purchaser or transferee at the time of the sale or delivery to him of such aircraft and shall within thirty-one (31) days notify the department in the manner prescribed by the department of such sale or transfer.
- (b) The purchaser or transferee of such aircraft, within thirty-one (31) days of such sale or transfer, shall apply to the department for the transfer of the registration of such aircraft to his name and the issuance of a new certificate of registration. The department shall file such application and, upon determining that the registration of such aircraft should be transferred, shall transfer the registration and issue a new certificate of registration. A fee of ten dollars (\$10) shall be charged for such transfer of registration.
- (c) When the sale or transfer of ownership occurs, the buyer or transferee shall ascertain from the department the amount of excise tax which the purchaser or transferee will be required to pay under section 15 of this chapter.
- (d) A person shall pay the gross retail tax or use tax to the department on the earlier of:
 - (1) the time the aircraft is registered; or
 - (2) not later than thirty-one (31) days after the purchase date; unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.(Emphasis added).

Taxpayer states in his protest letter that "[d]ue to the aircrafts age, the state of Kansas exempted collection of taxes on the sale and use of the aircraft." In other words, Taxpayer did not pay sales tax at the time he purchased the aircraft in Kansas. Thus the question before the Department is whether there is an exemption from Indiana use tax that is applicable to Taxpayer's facts.

IC § 6-6-6.5-9 states:

- (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:
 - (A) the United States government;
 - (B) a state (except Indiana), territory, or possession of the United States;
 - (C) the District of Columbia; or
 - (D) a political subdivision of an entity listed in clause (A), (B), or (C).
 - (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.
 - (3) An aircraft which this state is prohibited from taxing under this chapter by the Constitution or the laws of the United States.
 - (4) An aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana, an individual who is a resident of Indiana, or a corporation with Indiana corporate headquarters (as defined in [IC 6-1.1-12.2-6](#)).
 - (5) An aircraft which has been scrapped, dismantled, or destroyed, and for which the airworthiness certificate and federal certificate of registration have been surrendered to the Federal Aviation Administration by the owner.
 - (6) An aircraft owned by a resident of this state that is not a dealer and that is not based in this state at any time, if the owner files the required form not later than thirty-one (31) days after the date of purchase; and

furnishes the department with evidence, satisfactory to the department, verifying where the aircraft is based during the year.

(7) An aircraft owned by a dealer for not more than five (5) days if the ownership is part of an ultimate sale or transfer of an aircraft that will not be based in this state at any time. However, the dealer described in this subdivision is required to file a report of the transaction within thirty-one (31) days after the ultimate sale or transfer of ownership of the aircraft. The report is not required to identify the seller or purchaser but must list the aircraft's origin, destination, N number, date of each transaction, and ultimate sales price.

(8) An aircraft owned by a registered nonprofit museum, if the owner furnishes the department with evidence satisfactory to the department not later than thirty-one (31) days after the purchase date. The aircraft must be reported for registration, but the department shall issue the registration without charge.

(b) The provisions of this chapter pertaining to taxation shall not apply to an aircraft owned by and used exclusively in the service of Indiana or a political subdivision of Indiana or any university or college supported in part by state funds. That aircraft must be reported for registration, but the department will issue the registration without charge.

Taxpayer's facts do not come within any of the enumerated exemptions found within IC § 6-6-6.5-9. And IC § 6-2.5-3-4, which specifically pertains to use tax, states in relevant part:

(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 use tax exemptions are not applicable to Taxpayer's facts either. Thus the only question that remains is Taxpayer's citation of IC § 6-1.1-12-13; that provides for a deduction for individuals who served in the military or naval forces of the United States during a war. The Department notes that the statute (IC § 6-1.1-12-13) is in article 1.1 of title 6, which is an article that deals with property taxes. Thus it would not be applicable to Taxpayer's situation, since property tax is not what is at issue. Nor is IC § 6-6-5-5.2 applicable, since it pertains to motor vehicles.

FINDING

Taxpayer's protest is denied.

II. Tax Administration - Penalty & Interest.

DISCUSSION

The Department imposed a negligence penalty pursuant to IC § 6-8.1-10-2.1. The Department notes [45 IAC 15-11-2\(b\)](#), which 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. (Emphasis added).

And [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

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.

(Emphasis added)

Taxpayer did not develop a specific argument other than to say that "there was no intent to deceive the Indiana Department of Revenue of taxes due." However the question is whether or not Taxpayer has established "reasonable cause" for his failure to pay the use tax. Given the facts of Taxpayer's situation and the complicated "nature of the tax involved" (See [45 IAC 15-11-2\(c\)\(1\)](#)) for an aircraft purchased out-of-state in 2010 and then used in Indiana in 2014, the Department finds that Taxpayer has met his burden for waiver of the penalty.

Regarding the interest, the Department notes that under IC § 6-8.1-10-1(e) interest cannot be waived.

FINDING

Taxpayer's protest of the penalty is sustained; the protest of the interest is denied.

SUMMARY

Taxpayer's protest of the use tax imposed is denied. Taxpayer's protest of the penalty is sustained, however the protest of the interest is denied.

Posted: 05/27/2015 by Legislative Services Agency
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