

## DEPARTMENT OF STATE REVENUE

04-20150449.LOF

**Letter of Findings Number: 04-20150449**  
**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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Company was not responsible for use tax on its purchase of an aircraft from 2013 because it qualified for an exemption.

### ISSUES

#### 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 § 6-2.5-5-8; IC § 6-6-6.5-2; IC § 6-6-6.5-3; IC § 6-2.5-3-1; IC § 6-2.5-3-4; IC § 6-2.5-5; [45 IAC 2.2-3-4](#); Dep't 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); 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); Rhoades v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002).

Taxpayer protests the imposition of use tax on an aircraft.

#### II. Tax Administration--Penalty.

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

Taxpayer protests the Department's imposition of a penalty.

### STATEMENT OF FACTS

Taxpayer is a partnership. In 2013, Taxpayer bought a plane from a California company and attempted to bring the plane to Indiana. In route the plane experienced technical difficulties and landed in St. Louis, MO. The plane stayed in St. Louis for about four months for repairs. The plane was then flown to Indiana where Taxpayer leased the plane. In 2015, the Indiana Department of Revenue ("Department") sent a letter to Taxpayer, which stated that as the owner of an aircraft 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. This Letter of Findings results. 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." Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

The Department determined that Taxpayer failed to register the aircraft within 31 days of purchase, thus the Department assessed use tax for what Taxpayer would have paid at the time of registration. Taxpayer argues that it is engaged in the business of leasing the aircraft and is exempt because from the time of purchase it always intended to lease the plane and simply failed to register because the plane was in St. Louis for a considerable amount of time. Thus, the aircraft would have been exempt under IC § 6-2.5-5-8(e). Taxpayer also argued that it had remitted sales tax to Indiana based on the rental stream of income.

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). In addition, 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 generally 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). 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. "[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." *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 101 (Ind. Ct. App. 1974) (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).

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).

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).

During the protest process, Taxpayer provided documents that show it is in the business of leasing aircraft. Taxpayer also provided proof that the plane was in St. Louis for four months and flight logs to demonstrate when the plane arrived in Indiana. Taxpayer also provided proof of sales tax remitted to Indiana. Taxpayer was able to substantiate that although it did not register the plane within the amount of time stated in the statute, it did remit sales tax to Indiana based on a rental agreement that did exceed 7.5 percent of the aircraft's value. Therefore, Taxpayer met the requirements of IC§ 6-6-6.5-8(d) and IC § 6-2.5-5-8(e) and did qualify for the exemption. Taxpayer has met the burden of proving the proposed assessment incorrect, as required by IC § 6-8.1-5-1(c).

### FINDING

Taxpayer's protest is sustained.

### II. Tax Administration—Penalty.

Taxpayer requests that the Department abate the ten-percent negligence penalty. IC § 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to be determined on a case by case basis according to the facts and circumstances of each taxpayer. Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that 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. . . ."

Taxpayer has demonstrated that it will not owe any of the proposed tax assessments, as discussed in Issue I. Therefore, the issue of penalty assessed pursuant to IC § 6-8.1-10-2.1 is moot.

### FINDING

Taxpayer's protest is sustained.

### SUMMARY

Taxpayer's protest to the imposition of use tax and negligence penalty is sustained.

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An [html](#) version of this document.