

PETITIONER APPEARING PRO SE:
EUGENE A. BONFIGLIO
Fort Wayne, IN

ATTORNEYS FOR RESPONDENT:
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**IN THE
INDIANA TAX COURT**

EUGENE A. BONFIGLIO,)	
)	
Petitioner,)	
)	
v.)	Cause No. 02T10-0506-TA-50
)	
INDIANA DEPARTMENT OF)	
STATE REVENUE,)	
)	
Respondent.)	

ON APPEAL FROM A FINAL DETERMINATION
OF THE INDIANA DEPARTMENT OF STATE REVENUE

NOT FOR PUBLICATION
January 30, 2006

FISHER, J.

Eugene A. Bonfiglio (Bonfiglio) seeks a refund of the sales tax he paid on the 1997 purchase of an airplane. The sole issue for the Court to decide is whether Bonfiglio's airplane purchase was exempt from sales tax pursuant to Indiana Code § 6-2.5-5-8.

FACTS AND PROCEDURAL HISTORY

On January 9, 1997, Bonfiglio purchased an airplane from the Allen County Sheriff's Department. Bonfiglio purchased the airplane with the hope that, in leasing it to others, he would operate a profitable business. Bonfiglio did not pay sales tax on the purchase of the

airplane.

On February 14, 2001, the Department issued a demand notice to Bonfiglio for sales tax, penalties, and interest on the purchase of the airplane. Bonfiglio protested the assessment on March 12, 2001, claiming that his purchase was exempt from sales tax pursuant to Indiana Code § 6-2.5-5-8.

The Department conducted a telephonic administrative hearing on Bonfiglio's protest on August 26, 2004. The Department denied Bonfiglio's claim for exemption in a letter of findings issued on December 2, 2004.

Bonfiglio initiated this original tax appeal on May 27, 2005.¹ The Court conducted a trial on the matter on December 8, 2005. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court reviews final determinations of the Department *de novo*. IND. CODE ANN. § 6-8.1-5-1(h) (West 2006). Accordingly, the Court is bound by neither the evidence nor the issues presented at the administrative level. *Galligan v. Indiana Dep't of State Revenue*, 825 N.E.2d 467, 472 (Ind. Tax Ct. 2005), *review denied*.

When a taxpayer claims he is entitled to a tax exemption, he bears the burden of proving that the terms of the exemption have been met. *Tri-States Double Cola Bottling Co. v. Indiana Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999). While the exemption is to be strictly construed against the taxpayer, the Court will avoid reading its terms so narrowly so as to exclude a case that rightly falls within its ambit. *Id.* at 283-84.

¹ Prior to initiating his appeal, Bonfiglio paid the tax, penalties, and interest at issue. Because Bonfiglio now seeks a refund of that amount, which is less than \$5,000.00, his appeal is designated a "small tax case" pursuant to Indiana Tax Court Rule 16(A). See Ind. Tax Court Rule 16(A). (See *also* Pet'r V. Pet. at ¶ 6, 7; Resp't Answer at ¶ 6.)

DISCUSSION AND ANALYSIS

Bonfiglio maintains that his purchase of the airplane is exempt from sales tax, pursuant to Indiana Code § 6-2.5-5-8, which provides that “[t]ransactions 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 his business[.]” IND. CODE ANN. § 6-2.5-5-8 (West 1997). To support his claim, Bonfiglio explains that from June 1, 1998 through June 1, 2000, he leased the airplane to Executive Aviation and then, from June 7, 2000 to June 7, 2001, he leased the airplane to Riley Aviation. (See Trial Tr. at 10-12.) (See *also* Resp’t Exs. H and I.) While the Court does not doubt that Bonfiglio purchased the airplane for the purpose of leasing it (or, for that matter, that he actually leased the airplane), it nevertheless finds that he has not shown that *all* the terms of the exemption he seeks have been met.

Indiana imposes an excise tax, known as the state sales tax, on retail transactions made within the state. IND. CODE ANN. § 6-2.5-2-1(a) (West 1997). Pursuant to Indiana Code § 6-2.5-4-10(a), “[a] person . . . is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person.” IND. CODE ANN. § 6-2.5-4-10(a) (West 1997). Indiana Code § 6-2.5-5-8 exempts, *inter alia*, tangible personal property acquired for the purpose of leasing it to others. See A.I.C. § 6-2.5-5-8. Thus, Indiana Code § 6-2.5-5-8 *works in conjunction with* Indiana Code § 6-2.5-4-10(a) to mitigate the effect of any tax pyramiding. *Tri-States Double Cola Bottling Co.*, 706 N.E.2d at 285 n.5. Indeed, “were it not for [§] 6-2.5-5-8, part of the sales tax on the lease transaction would reflect the tax on the lessor’s purchase of the property being leased, thus resulting in tax pyramiding.” *Id.*

The relationship between Indiana Code § 6-2.5-5-8 and Indiana Code § 6-2.5-4-10(a) means one of two things for Bonfiglio: either his lease transactions with Executive Aviation and Riley Aviation were taxable or his purchase of the airplane was taxable. Consequently, in claiming that his purchase of the airplane was exempt from sales tax pursuant to Indiana Code § 6-2.5-5-8, Bonfiglio was required to show more than his intent to lease the airplane or that he actually did lease the airplane. Rather, he was required to show that the lease transactions with Executive Aviation and Riley Aviation were taxed. See *id.* at 283, 285. As the evidence in this case reveals, however, neither lease transaction was taxed.

When Bonfiglio leased his airplane to Executive Aviation and Riley Aviation, he was a retail merchant making a retail transaction. See A.I.C. § 6-2.5-4-10(a). See also IND. CODE ANN. § 6-2.5-8-1 (West 1997) (providing that retail merchants must register with the Department); (Trial Tr. at 38 (indicating that Bonfiglio had registered as a retail merchant with the Department).) Consequently, Bonfiglio, as an agent for the Department, was charged with collecting sales tax on each lease transaction. See A.I.C. § 6-2.5-2-1(b). See also IND. CODE ANN. § 6-2.5-6-1 (West 1997); IND. CODE ANN. § 6-2.5-6-2 (West 1997); IND. CODE ANN. § 6-2.5-6-7 (West 1997) (all describing how a retail merchant is to file sales tax returns with the Department in which he reports taxable transactions and the tax collected thereon). Nevertheless, the sales tax returns Bonfiglio filed reflecting the period during which he leased his airplane (i.e., June 1998 through June 2001) indicate that Bonfiglio did

not collect sales tax - from either lessee - on the lease transactions.²

In response, Bonfiglio claims that he was not required to collect sales tax from either lessee because they themselves were exempt from paying sales tax on the lease transactions. Presuming that both Executive Aviation and Riley Aviation were eligible for an exemption from sales tax when they leased the airplane from Bonfiglio, they were each required to present an exemption certificate (Form ST-105) to Bonfiglio in lieu of paying the tax. See IND. CODE ANN. § 6-2.5-8-8(a) (West 1997). In turn, Bonfiglio was required to keep a copy of these certificates in order to substantiate the exempt transaction with the Department. See *id.* (See also Resp't Ex. D (indicating that the Department informed Bonfiglio in 1997, after he purchased the airplane, that in order to substantiate his claim for exemption under Indiana Code § 6-2.5-5-8, he would be required to provide the Department with copies of his lessees' exemption certificates).)

With respect to Executive Aviation, Bonfiglio has merely presented its "Air Carrier Certificate." (Resp't Ex. H at 2.) This certificate, issued by the Federal Aviation Administration (FAA), does nothing more than indicate that Executive Aviation is

² In fact, for the period of January 1998 through December 2000 (the lease term with his first lessee, Executive Aviation), Bonfiglio not only did not collect sales tax on the lease transaction, he reported no gross income from the lease transaction (i.e., taxable sale) on his sales tax returns. (Cf. Resp't Ex. F with IND. CODE ANN. § 6-2.5-6-7 (West 1997).) This clearly contradicts Bonfiglio's other evidence indicating that he did, in fact, receive gross income from the lease transaction. (See Trial Tr. at 10-12, 23, 57-58; Resp't Exs. O at 4, P at 4 (copies of Bonfiglio's federal tax returns in which he reported the income he earned from the lease transaction). Bonfiglio later admitted that he should have reported the income from the lease transaction on his sales tax returns, but never filed an amended return because he "did not have another form to fill out." (See Trial Tr. at 33-34, Resp't Ex. J at 2.)

“authorized to operate as an air carrier and conduct common carriage operations[.]”³ (Resp’t Ex. H at 2 (footnote added).) Consequently, Bonfiglio has not shown that Executive Aviation was exempt from paying sales tax on its lease transaction.

With respect to Riley Aviation, Bonfiglio has presented an exemption certificate. (See Pet’r Ex. 3.) Nevertheless, the certificate is dated April 28, 2005 – nearly four years *after* the expiration of Riley Aviation’s lease term with Bonfiglio. Consequently, the exemption certification does not show that, *during the term of its lease*, Riley Aviation was exempt from paying sales tax on the lease transaction.⁴

³ During trial, Alice Quakenbush, an assistant supervisor in the Department’s aeronautical section, testified that air carrier certificates are issued by the Federal Aviation Administration (FAA) to those entities qualified to provide public transportation. “They have to meet strict criteria as far as carrying the public and maintenance and the type of pilots that they use to fly aircraft.” (Trial Tr. at 35-36, 40-41.)

Indiana Code § 6-2.5-5-27 provides that “[t]ransactions involving tangible personal property . . . are exempt from [sales] tax, if the person acquiring the property . . . directly uses or consumes it in providing public transportation for persons or property.” IND. CODE ANN. § 6-2.5-5-27 (West 1997). Nevertheless, entitlement to this exemption requires more than a mere statement by the FAA that Executive Aviation *was qualified* to provide public transportation; rather, it requires an analysis as to whether, for example, Executive Aviation was predominately engaged in transporting the property of another for consideration or whether it actually transported people for consideration. See, e.g., *Carnahan Grain, Inc. v. Indiana Dep’t of State Revenue*, 828 N.E.2d 465, 467 (Ind. Tax Ct. 2005) (citation omitted); *Grand Victoria Casino & Resort, LP v. Indiana Dep’t of State Revenue*, 789 N.E.2d 1041, 1044 (Ind. Tax Ct. 2003). No such analysis has been presented in this case.

⁴ Bonfiglio asserts that despite its date, the exemption certificate could only logically apply to the relevant lease period because that is “the only time [Riley Aviation] had that aircraft.” (Trial Tr. at 32.) Nevertheless, exemption certificates are to be presented to the retail merchant at the point of sale. See IND. CODE ANN. § 6-2.5-8-8(a) (West 1997). Indeed, the exemption certificates even state that “[p]urchasers not able to provide all required information [at the point of sale] must pay the tax and may [subsequently] file a claim for refund [] directly with the Department[.]” (See Pet’r Ex. 3.)

CONCLUSION

Bonfiglio has not shown that his lease transactions with Executive Aviation and Riley Aviation were taxed, nor were either of the lessees exempt from paying sales tax on those transactions. Consequently, Bonfiglio has not shown that his 1997 airplane purchase is exempt from taxation pursuant to Indiana Code § 6-2.5-5-8. The Court therefore AFFIRMS the final determination of the Department.