

Exemptions from tax are strictly construed. See *United Air Lines, Inc. v. Johnson*, 84 Ill. 2d. 446, 456, 419 N.E.2d 899, 904 (1981). (This is a GIL.)

May 22, 2009

Dear Xxxxx:

This letter is in response to your letter dated October 22, 2008, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of our client ('Buyer'), we hereby respectfully request, pursuant to 2 Ill. Admin. Code Section 1200.120, a general information letter ('GIL') from the Illinois Department of Revenue ('Department'). Pursuant to this request, we seek advice to help the Buyer determine whether an aircraft purchased outside the state of Illinois is subject to Illinois use tax under the facts described below.

FACTS

The Buyer is a limited liability company that intends to purchase and accept delivery of an aircraft outside of Illinois. The Buyer also intends to hangar and register the aircraft outside Illinois. The Buyer, however, will make occasional flights into Illinois. For purposes of this GIL, it is assumed that the Buyer will not store or use the aircraft in Illinois more than ten (10) days during any twelve (12) month period after the date of sale.

In general, use tax is imposed on the privilege of using in Illinois tangible personal property purchased at retail from a retailer. Exemptions, however, are provided for aircraft under certain circumstances. Effective July 1, 2007, an aircraft is exempt from Illinois sales and use tax if the aircraft is purchased in Illinois and all of the following conditions are met¹:

- (A) the aircraft leaves this State within fifteen days after the later of either the issuance of the final billing for the purchase of the aircraft or the authorized approval for return to service, completion of maintenance record entry, and completion of the test flight and ground test for inspection, as required by 14 C.F.R. 91.407;
- (B) the aircraft is not based or registered in this State after the purchase of the aircraft; and
- (C) the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this item are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require.

This provision is commonly referred to as a 'fly away' exemption. For purposes of this fly away exemption, the term 'based in this State' is defined to mean hangared, stored, or otherwise used; excluding post-sale customizations, for ten (10) or more days in each twelve-month (12) period immediately following the date of the sale of the aircraft.

DISCUSSION

On its face, the Illinois fly away exemption does not apply to the Buyer because the Buyer does not intend to purchase its aircraft in Illinois. Nevertheless, the fly away exemption arguably reflects a legislative determination that an aircraft that is flown into Illinois less than ten (10) days a year should not be subject to use tax regardless of where the aircraft is purchased. Through the new fly away exemption, the General Assembly has created a safe harbor for buyers that purchase their aircraft in Illinois. These buyers know that if they purchase a plane in Illinois and then remove it within fifteen (15) days, they will not be subject to use tax in Illinois as long as the aircraft is not registered in Illinois, hangared in Illinois or flown into Illinois more than ten (10) days during the year. This 10-day rule provides purchasers who accept delivery of an aircraft in Illinois with a bright-line, easily applied test to avoid Illinois use tax.

By contrast, purchasers who accept delivery of aircraft outside Illinois do not share the benefit of the same safe harbor rule. Indeed, the Illinois Use Tax Act, the Department's regulations, and Illinois case law do not provide useful guidance for out-of-state purchases regarding how often a purchaser can bring an aircraft into Illinois without incurring a use tax. Despite this lack of guidance, it is a legal maxim that 'the law cares not for trifles' (*see Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214 (1992)) and it can reasonably be assumed that the Department will not impose a use tax on an aircraft owner who only occasionally flies the aircraft into Illinois.

In this regard, the Buyer submits that the 10-day rule contained in the new fly away exemption should be applied to aircraft purchased outside Illinois. The 10-day rule reflects a legislative determination that the *de minimus* use of an aircraft in Illinois should not result in a use tax liability. Further, applying the 10-day rule to out-of-state purchasers puts those purchasers on equal footing with in-state purchasers who can take advantage of the rule in guiding their affairs.

Accordingly, the Buyer requests a GIL confirming that it will not be subject to Illinois use tax if it purchases, registers and hangars its aircraft outside Illinois and does not store or use the aircraft in Illinois more than ten (10) days during any twelve (12) month period after the date of sale.

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Thank you for considering my request for a GIL. Please do not hesitate to contact me if you have any questions.

DEPARTMENT'S RESPONSE:

Your letter does not state whether your client is purchasing the aircraft from a retailer or through a private sale. Depending on the nature of the seller, a purchaser of an aircraft used in the State of Illinois may be subject to liability under either the Use Tax Act or the Aircraft Use Tax Law

The Aircraft Use Tax Law imposes on the privilege of using, in this State, any aircraft as defined in Section 3 of the Illinois Aeronautics Act acquired by gift, transfer, or purchase after June 30, 2003, from a person that is not in the business of selling aircraft. The tax does not apply (i) if the use of the aircraft is otherwise taxed under the Use Tax Act; (ii) if the aircraft is bought and used by a governmental agency or a society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes; (iii) if the use of the aircraft is not subject to the Use Tax Act by reason of subsection (a), (b), (c), (d), or (e) of Section 3-55 of the Use Tax Act dealing with the prevention of actual or likely multistate taxation; or (iv) if the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is a surviving spouse. 35 ILCS 157/10-15; 86 Ill. Adm. Code 152.115. The tax is imposed on the use of aircraft in this State regardless of whether the aircraft is actually registered under the Illinois Aeronautics Act. 86 Ill. Adm. Code 152.101.

The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3.

Subsections (a)-(e) of Section 3-55 of the Use Tax Act, 35 ILCS 105/3-55(a)-(e), provide the following exemptions:

(a) The use, in this State, of tangible personal property acquired outside this State by a nonresident individual and brought into this State by the individual for his or her own use while temporarily within this State or while passing through this State.

(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for-hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for-hire,

(c) The use, in this State, by owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire,

(d) The use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in

respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State.

(e) The temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State.

The fly-away exemptions contained in the Retailers' Occupation Tax Act (35 ILCS 120/2-5(25-7)) and the Use Tax Act (35 ILCS 105/3-55(h-2)) were enacted by the legislature to address specific circumstances and provide exemptions from tax if the conditions of the exemptions are satisfied. The Department disagrees with your statement that "the fly away exemption arguably reflects a legislative determination that an aircraft that is flown into Illinois less than ten (10) days a year should not be subject to use tax regardless of where the aircraft is purchased." Exemptions from tax are strictly construed. "Every presumption is against the intention to exempt property from taxation." *United Air Lines, Inc. v. Johnson*, 84 Ill. 2d. 446, 456, 419 N.E.2d 899, 904 (1981).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk

¹ 35 ILCS 120/2-5(25-7); 35 ILCS Sec. 5/105-3(h-2). See Also, Illinois Dept. of Rev. Info. Bulletin No. FY 2008-02, 9/1/2007.