ST 19-0020-GIL 10/04/2019 ROLLING STOCK

Flights in foreign commerce qualify as flights in interstate commerce for the purpose of the rolling stock exemption. See 35 ILCS 120/2-5(13) and 35 ILCS 120/2-51(e). (This is a GIL.)

October 4, 2019

Dear XXX:

This letter is in response to your letter dated March 29, 2019, in which you requested 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 COMPANY ("COMPANY" or the "Company"), we request the Illinois Department of Revenue issue a Private Letter Ruling with respect to the factual situation discussed below. Our request is pursuant to 2 Ill. Adm. Code 1200.110. We request a ruling to confirm that COMPANY's purchase of an aircraft under lease to a foreign airline qualifies for the exemption provided by ILCS §120/2-5(13). Specifically, we seek confirmation that the exemption is applicable where the aircraft at issue is utilized by a lessee airline in providing its commercial transportation services such that the aircraft's landings occur in Illinois and a foreign country only.
>
> **GENERAL INFORMATION**
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> 1. Enclosed please find an original Form IL-2848, Power of Attorney, authorizing FIRM to represent COMPANY before the Illinois Department of Revenue (the "Department").

2. This Private Letter ruling ("PLR") request is not submitted with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the tax consequences of the actual business practices of the Company.

3. The Company is not currently engaged in litigation with the Department in regard to this or any other tax matter.

4. The Company is not currently under audit by the Department in regard to this or any other tax matter.

5. Department has not previously formally ruled regarding this matter for the Company.

6. FIRM, on behalf of COMPANY, submitted a web request to Mr. NAME, Technical Assistance Division, on this issue. Mr. NAME replied on July 23, 2018 as follows: "Based on what I can find in our rules and regulations, so long as the trip is originating in Illinois and ending outside of Illinois, or originating outside of Illinois and ending in Illinois we would consider that interstate, regardless of whether the trip began in a different state or different country." (email correspondence attached)

7. Mr. NAME recommended that my client submit a Private Letter Ruling request.

8. The Company requests that certain information be redacted from the PLR prior to dissemination to others. The Company requests that its name and the name of its employees and representatives be redacted.

9. The Company knows of no authority contrary to the authorities referred to and cited below.

STATEMENT OF MATERIAL FACTS

1. COMPANY is a foreign corporation headquartered in COUNTRY. COMPANY, through affiliated group companies, also has a presence in COUNTRIES. COMPANY has no offices or presence in Illinois.

2. COMPANY is a leading global aircraft leasing company. COMPANY engages in buying, leasing and selling aircraft throughout the world.

3. COMPANY will purchase an aircraft in Illinois that is under lease to a foreign commercial airline. The lessee airline will use the aircraft in providing its

carrier services for persons and property under the authority of that foreign government.

4. At the time of purchase, the subject aircraft will be under lease to the airline.

5. The lessee airline anticipates using the aircraft solely on routes from Illinois to the foreign country and back.

6. The lessee airline does not anticipate using the aircraft to land anywhere in the United States other than Illinois.

7. The terms of the lease with lessee airline do not restrict the use of the aircraft to the anticipated Illinois-to-foreign country flight plan(s).

RULING REQUESTED

On behalf of the Company, we respectfully request the Department rule that the sale of an aircraft to COMPANY, under the conditions described above, is exempt of Retailers Occupation Tax pursuant to ILCS § 120/2-5(13).

RELEVANT AUTHORITIES

The tax commonly known as the Illinois "sales tax" is composed of the ROT, the service occupation tax ("SOT"), the use tax ("UT"), and the service use tax ("SUT"). (The SOT and the SUT are not relevant to the transaction at issue as those taxes are imposed on transactions involving the sale of services.)

The Illinois ROT Act imposes a tax on persons engaged in the business of making retail sales of tangible personal property. 35 Illinois Compiled Statutes 120/2 (hereinafter "ILCS"); 86 Ill. Adm. Code §130.101 (hereinafter "ILAC"). In accordance with Section 2-10 of the Act, this tax is measured by the seller's gross receipts. 35 ILCS 120/2-10; 86 ILAC 130.101. The legal incidence of the ROT falls on the seller, who effects reimbursement by collecting UT from its customer. 86 ILAC 130.101(d).

Generally speaking, all sales of tangible personal property, including aircraft, are presumed subject to the ROT unless it can be established that the transfer of property is incident to a service or an exemption applies. The seller has the burden of proving that a transaction is not taxable or otherwise not subject to the ROT. 86 ILAC 130.801(f).

ILCS § 120/2-5(13) sates, in relevant part:

"Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act … (13) Proceeds from sales to 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 and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce." (emphasis supplied)

ILCS § 120/2-51 [eff. 7-1-2017] states, in relevant part:

"(e) For aircraft and watercraft purchased on or after January 1, 2014, 'use as rolling stock moving in interstate commerce' in paragraph (13) of Section 2-5 occurs when, during a 12-month period, the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the exemption shall make an election at the time of purchase to use either the trips or mileage method and document that election in their books and records. If no election is made under this subsection to use the trips or mileage method, the person shall be deemed to have chosen the mileage method. For aircraft, flight hours may be used in lieu of recording miles in determining whether the aircraft meets the mileage test in this subsection. For watercraft, nautical miles or trip hours may be used in lieu of recording miles in determining whether the watercraft meets the mileage test in this subsection."

A complementary "rolling stock" exemption exists for purposes of the Use Tax.

"To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:…… (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, and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce." (ILCS §105/3-55(c))

ILAC 130.340 states in relevant part:

"a) In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to 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. [35 ILCS 120/2-5(13)] For example,

the exemption may also apply to lessors under leases of less than one year's duration and manufacturers who provide tangible personal property (such as shipping containers) to interstate carriers for hire when those interstate carriers use that property as rolling stock moving in interstate commerce.

b) The term "Rolling Stock" includes the transportation vehicles of any kind of interstate transportation company for hire (railroad, bus line, air line, trucking company, etc.), but not vehicles that are being used by a person to transport its officers, employees, customers or others not for hire (even if they cross State lines) or to transport property that the person owns or is selling and delivering to customers (even if the transportation crosses State lines). ….

c) The rolling stock exemption cannot be claimed by a purely intrastate carrier for hire as to any tangible personal property that it purchases because it does not meet the statutory tests of being an interstate carrier for hire.

d) Except as provided in subsection (h) of this Section, the exemption applies to vehicles used by an interstate carrier for hire, even just between points in Illinois, in transporting, for hire, persons whose journeys or property whose shipments, originate or terminate outside Illinois on other carriers. The exemption cannot be claimed for an interstate carrier's use of vehicles solely between points in Illinois where the journeys of the passengers or the shipments of property neither originate nor terminate outside Illinois." (emphasis supplied)

And

ILCS § 120/2-5(13)(h)(1)(D) [sic] states:

"Example 1: An interstate carrier uses a truck to carry property for hire from Springfield, Illinois to Champaign, Illinois where part of that property is delivered. The carrier continues to Indianapolis, Indiana and delivers part of that property in that city. The truck then continues to Gary, Indiana and delivers the remainder of the property in that city. The truck then returns empty to Springfield, Illinois from the delivery in Gary, Indiana. The truck is considered to have made a total of four trips (one trip to Champaign, Illinois, one trip to Indianapolis, Indiana, one trip to Gary, Indiana, and a return trip back to Springfield, Illinois). If this were all the trips that the truck made within the first 12-month period after it was purchased (or was all the trips that truck made in a subsequent 12-month period), it would qualify for the test set forth in this subsection (h) for that 12-month period because it made 3 qualifying trips for hire that terminated or originated outside of Illinois and only one intrastate trip, thereby resulting in a percentage of 75% of its total trips during that first 12-month period. Any repair and replacement parts purchased for the truck during

that first 12-month period would also have qualified for the exemption." (emphasis supplied)

Mr. NAME, Illinois Technical Assistance Division, provided the following:

"Some of the examples I was able to find discussed limousines picking travelers up at O'Hare international airport and delivering them to a hotel in Chicago qualifying because the trip began outside of Illinois. The references I was able to find neither specified or excluded international origins or destinations." (email, 07/23/2018)

DISCUSSION AND ANALYSIS

When the purchaser of an aircraft in Illinois is a lessor, the ROT exemption provided by ILCS § 120/2-5(13) requires that the following conditions be met:

1. Gross receipt must be from the sale of tangible personal property;

2. The tangible personal property must be sold to an owner, lessor or shipper;

3. The tangible personal property must be utilized by an interstate carrier;

4. The interstate carrier must provide transport "for hire";

5. The interstate carrier must use the tangible personal property as rolling stock;

   and

6. The tangible personal property must move in interstate commerce.

We believe the "interstate carrier" requirement can be met where the carrier travels between a foreign country and Illinois, even though that travel does not involve another US state.

COMPANY will purchase an aircraft (tangible personal property) which is under lease to a commercial airline. That commercial airline has the appropriate regulatory permissions to provide "for hire" transportation services for persons and cargo between Illinois and a foreign country. It is our position that the aircraft qualifies as rolling stock under the definition provided by ILAC 130.340(b) because the aircraft is a transportation vehicle used by an airline to transport persons or cargo for hire while crossing state lines.

We have been unable to locate a definition of "interstate" carrier or "interstate" commerce as applicable to an airline.

However, we believe the example in ILCS § 120/2-5(13)(h)(1)(D) [sic] provides helpful guidance, although directed at determining whether trucks, not aircraft, qualify for exemption. The example concludes that the truck at issue qualified for the rolling stock exemption because it made 3 qualifying trips for hire that terminated or originated outside of Illinois. In determining which of the truck's trips were "interstate" the Regulation considers whether the trip originated or terminated outside of Illinois.

Similarly, we believe the airline at issue here should qualify as an interstate carrier moving in interstate commerce because each of its trips originates or terminates outside Illinois. The test for "interstate commerce" does not require that the trip originate or terminate in another US state. Therefore, the term "interstate commerce" can apply where an aircraft flies between Illinois and a foreign country because those flights terminate or originate in the foreign country. Similarly, a flight that originates **and** terminates in a US state or states (other than Illinois) or a foreign country or countries is engaged in "interstate commerce."

To qualify for exemption, an aircraft must be used more than 50% of the time in qualifying interstate commerce during a 12-month period. Because the airline anticipates that nearly 100% of its service flights will originate or terminate outside Illinois, the aircraft will meet that test. We recognize that the aircraft may occasionally fly on other routes but it is highly unlikely those routes would originate and terminate in Illinois. In addition, the aircraft may occasionally fly to a maintenance and repair location, but those limited flights will not taint the exemption assuming the 50% test is met.

Our interpretation of the "rolling stock" exemption is also consistent with the United States constitution's Foreign Commerce Clause. To permit an exemption for aircraft purchased by domestic airlines flying between US States, but disallow the exemption for aircraft purchased by foreign airlines flying only between Illinois and a foreign country, could result in in discrimination against foreign commerce in violation of the Foreign Commerce Clause. (see, KRAFT GENERAL FOODS, INC., Petitioner v. IOWA DEPARTMENT OF REVENUE AND FINANCE 505 US 71, 112 S Ct 2365, 120 L Ed 2d 59) Similarly, discrimination against foreign commerce could result if the "rolling stock" exemption is allowed for aircraft purchases by lessors leasing to domestic airlines but not for aircraft purchases by lessors leasing to foreign airlines.

CONCLUSION

We respectfully request that the Department issue a ruling stating that, under the provisions ILCS § 120/2-5(13), the sale to COMPANY of an aircraft located in Illinois that will be under lease by COMPANY to an airline at the time of the transaction is exempt of ROT when that airline plans to use the aircraft to provide

for-hire transportation services between Illinois and a foreign country. Such travel constitutes "interstate commerce."

In addition, COMPANY will not owe Use Tax on the use of the aircraft, pursuant to ILCS § 105/3-55(c).

Please also confirm that COMPANY should provide the aircraft seller with a completed Form RUT-7-A-Rolling Stock Certification for Aircraft, Watercraft, Limousines, and Rail Carrier Items (attached).

If the Department cannot conclude that COMPANY's aircraft purchase and use qualifies for the "rolling stock" exemptions as described above, we respectfully request that the Department contact the undersigned at (206) 913-4117 to discuss this matter.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope however, the following General Information Letter will be helpful in addressing your questions.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Retailers' Occupation Tax does not apply to sales to 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. See 35 ILCS 120/2-5(13). In addition, the Use Tax does not apply to 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. See 35 ILCS 105/3-55(c).

Further, subsection (e) of Section 2-51 of the Retailers' Occupation Tax Act provides that:

> (e) For aircraft and watercraft purchased on or after January 1, 2014, "use as rolling stock moving in interstate commerce" in paragraph (13) of Section 2-5 occurs when, during a 12-month period, the rolling stock has carried persons or property for hire

> in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the exemption shall make an election at the time of purchase to use either the trips or mileage method and document that election in their books and records. If no election is made under this subsection to use the trips or mileage method, the person shall be deemed to have chosen the mileage method. For aircraft, flight hours may be used in lieu of recording miles in determining whether the aircraft meets the mileage test in this subsection. 35 ILCS 120/2-51

In order to claim the rolling stock exemption for an aircraft, the carrier must be able to document that it has authority to operate as an interstate carrier for hire and show, from its books and records, that it meets the trips or miles test described in subsection (e) of Section 2-51 of the Retailers' Occupation Tax Act. Absent the ability to document that the carrier has authority to operate as an interstate carrier for hire and actually operates the aircraft in a manner that qualifies for the exemption, no rolling stock exemption is available.

It is the Department's understanding that COMPANY's lessee has the appropriate regulatory permissions to provide "for hire" transportation services for persons and cargo between Illinois and a foreign country. It is also the Department's understanding that aircraft will meet the trips or miles test under subsection (e) of Section 2-51 of the Retailers' Occupation Tax Act. Assuming that the aircraft otherwise meets the requirements of the exemption as set out above in this paragraph, the fact that the flights are between Illinois and a foreign country, rather than Illinois and another state in the United States does not invalidate the exemption. In other words, flights in foreign commerce qualify as flights in interstate commerce for the purpose of the rolling stock exemption.

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,

Samuel J. Moore
Associate Counsel

SJM:rkn

CC: Angi Freitag – IDOR

ROLLING STOCK: Flights in foreign commerce qualify as flights in interstate commerce for the purpose of the rolling stock exemption. See 35 ILCS 120/2-5(13) and 35 ILCS 120/2-51(e). (This is a GIL.)