

**PRIVATE TAXPAYER RULING LR02-016**

September 18, 2002

The following private taxpayer ruling is in response to your letter dated August 2, 2002 and additional information dated August 30, 2002. You have requested a ruling on behalf of . . . regarding the Arizona transaction privilege tax ("transaction privilege tax") and Arizona use tax ("use tax") implications on the sale of two aircraft by . . . to . . . .

Pursuant to Arizona Revised Statutes ("A.R.S.") § 42-2101 the department may issue private taxpayer rulings to taxpayers and potential taxpayers on request. As requested, a private taxpayer ruling is being issued. However, . . . is not a seller conducting business in Arizona. Therefore, the transaction privilege tax does not apply to . . . and will not be addressed in the private taxpayer ruling. Rather, the private taxpayer ruling will discuss whether the imposition of use tax is applicable based on the information provided.

**Statement of Facts:**

. . . is a wholly owned subsidiary of . . . , a . . . corporation. . . . maintain their corporate headquarters in . . . . They sell insurance products to individuals and businesses in all states (with, for . . . , the exception of the State of New York). Sales and customer service offices are located in most states, including the State of Arizona.

. . . has entered into two separate Aircraft Purchase Agreements, each dated . . . (the "Aircraft Purchase Agreements"), with . . . , a . . . corporation with headquarters in . . . . Under the terms of the Aircraft Purchase Agreement, . . . agreed to take delivery of and to purchase two . . . aircraft (individually and collectively, the "Aircraft"). The execution of the Aircraft Purchase Agreements occurred outside the State of Arizona. A substantial portion of the purchase price of each Aircraft was paid by . . . upon execution of the Aircraft Purchase Agreements.

Also under the terms of the Aircraft Purchase Agreements, . . . agreed to have the aircraft ready for Buyer's inspection and acceptance in Tucson, Arizona by . . . . The "green" Aircraft are currently located at . . . finishing plant in Tucson, Arizona where they are being completed in accordance with contract specifications. "Green" aircraft are aircraft which are capable of flight, being equipped with all necessary flight equipment, but whose interiors are not customized or completed. If it appears that delivery of the Aircraft will occur after . . . , . . . will have the option to accept interim delivery of the Aircraft under one of two situations, described below.

The option to accept interim delivery of the Aircraft will be exercised by . . . for the purpose of obtaining favorable United States income tax treatment by qualifying the Aircraft as "replacement" aircraft under the exchange rules adopted pursuant to Internal Revenue Code Section 1031 ("Section 1031"). Under Section 1031, the buyer has 180 days from the date of the sale of old or relinquished aircraft to identify and complete the purchase of "replacement" aircraft. On . . . , . . . sold two used aircraft. The 180-day replacement period for such aircraft will end on . . . .

Situation 1-Sale of Aircraft Takes Place in Arizona; After the Sale, . . . Completes Manufacture of the Aircraft at Its . . . Facility, After which the Aircraft are Flown Outside Arizona to . . . for Use Outside Arizona.

Under the first alternative, . . . will deliver to . . . a FAA Form 8050-2 Aircraft Bill of Sale and . . . will accept possession of the Aircraft for the purposes of registering the Aircraft in its name with the FAA. This sale will take place in Tucson and . . . will retain possession of the Aircraft at its Tucson facility for the purpose of completing the work. Once . . . notifies . . . that the Aircraft is ready for final delivery, . . . will have 10 days to inspect the Aircraft and conduct an acceptance flight test prior to accepting delivery of the Aircraft. Once purchase of the Aircraft is completed, the Aircraft will be flown outside Arizona to . . . in . . . , where they will be located, for use outside of Arizona.

Situation 2-Sale of Aircraft Takes Place in . . . ; After the Sale, the Aircraft are Flown by . . . Back to Arizona where . . . Completes Manufacture of the Aircraft at Its Tucson Facility, After which the Aircraft Are Flown Outside Arizona to . . . for Use Outside Arizona.

Under the second alternative, . . . will deliver the Aircraft to . . . in . . . , where . . . will take physical possession of the Aircraft. . . . will also deliver to . . . a FAA Form 8050-2 Aircraft Bill of Sale and . . . will register the Aircraft in its name with the FAA. Following the transfer of title and physical possession of the Aircraft from . . . to . . . , which will take place at . . . in . . . , . . . will transport the green Aircraft back to Tucson, Arizona where the interior completion work will be performed. Once . . . notifies . . . that the Aircraft is completed, . . . will have 10 days to inspect the aircraft and conduct an acceptance flight prior to accepting final delivery of the Aircraft. The completed Aircraft will then be flown outside Arizona, back to . . . in . . . , where they will be located, for use outside of Arizona.

Issue:

Whether . . . is subject to use tax on the purchase of the Aircraft.

## Your Position:

It is your position that under the "aircraft fly-away exemption" neither the transaction privilege tax nor the use tax will apply to the sale of the two green aircraft to . . . where the aircraft are retained by the seller, . . . , in Arizona following transfer of title for the sole purpose of completing the manufacturing process. After which, the two aircraft will be flown outside Arizona to . . . in . . . , where they will be located, for use outside of Arizona. It is also your position that under the "aircraft fly-away exemption" neither the transaction privilege tax nor the use tax will apply to the sale of the two green aircraft to . . . where . . . will deliver planes to . . . in . . . , where title to the aircraft will be transferred by . . . to . . . , after which the two green aircraft will be flown by . . . back to their facilities in Tucson for the sole purpose of completing the manufacturing process. After completion, the two aircraft will then be flown outside Arizona to . . . in . . . , where they will be located, for use outside of Arizona.

## Applicable Law:

A.R.S. § 42-5151(13) defines "purchase" as any transfer, exchange or barter, conditional or otherwise, in any manner or by any means, of tangible personal property for a consideration, including transactions by which the possession of property is transferred but the seller retains the title as security for payment.

A.R.S. § 42-5151(20) defines "use or consumption" as the exercise of any right or power over tangible personal property incidental to owning the property except holding for sale or selling the property in the regular course of business.

A.R.S. § 42-5155 imposes a use tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer or utility business, as a percentage of the sales price.

A.R.S. § 42-5159(B)(7)(b) provides an exemption from use tax for aircraft sold to persons who are not residents of this state and who will not use such property in this state other than removing such property from this state.

## Discussion:

Arizona's transaction privilege tax differs from the sales tax imposed by most states. It is a tax on the privilege of conducting business in the State of Arizona, and is imposed upon the seller. The seller may pass the burden of the tax on to the purchaser, but the seller is ultimately liable to Arizona for the tax.

Based on the information provided, . . . is not the seller; therefore, the transaction privilege tax does not apply. However, A.R.S. § 42-5155 imposes a use tax on the storage, use or consumption in Arizona of tangible personal property purchased from a retailer. Therefore, . . . 's purchase of tangible personal property may be subject to use tax unless statutorily exempt.

### ***Situation One***

Under situation one, the sale of the Aircraft takes place in Arizona. After the sale, . . . will complete the manufacturing process of the Aircraft at its Tucson facility. Once the Aircraft are complete they will be flown outside of Arizona to . . . for use outside of Arizona.

When . . . receives the FAA Form 8050-2 Aircraft Bill of Sales from . . . for the green Aircraft a purchase has occurred. A.R.S. § 42-5151(13) defines "purchase" as any transfer ... conditional or otherwise, in any manner or by any means, of tangible personal property for a consideration. Consequently, use tax is imposed on the storage, use or consumption in Arizona of tangible personal property purchased from a retailer.

However, A.R.S. § 42-5159(B)(7)(c) provides an exemption for aircraft, navigational and communication instruments and other accessories and related equipment sold to persons who are not residents of this state and who will not use such property in this state other than removing such property from this state. For purposes of the use tax, the term "use" is statutorily defined as "the exercise of any right or power over tangible personal property incidental to owning the property...." A.R.S. § 42-5151(20). In construing the term "use" according to its appropriate meaning in the law, the department has determined that when a purchaser obtains title to a green aircraft it is not "using" the aircraft in this state when the aircraft is retained in this state, at the direction of the seller, for the sole purpose of completing the manufacturing process. As a result, . . . is not subject to use tax on the Aircraft retained in Arizona for the sole purpose of completing the manufacturing of the green Aircraft.

### ***Situation Two***

The only difference under situation two is that the sale of the Aircraft takes place in . . . . After the sale takes place, . . . will fly the Aircraft back to Arizona where . . . will complete the manufacturing of the Aircraft at its Tucson facility. Once the Aircraft are complete, they will be flown to . . . for use outside of Arizona.

Similarly, the purchases of the Aircraft are specifically exempt under A.R.S. § 42-5159(B)(7)(b). The fact that the Aircraft are flown to . . . prior to the sale and are subsequently returned to Arizona does not change the end result.

### **Conclusion and Ruling:**

The following ruling is based on the facts presented in your request. The department rules that . . . is not subject to use tax on the Aircraft retained in Arizona for the sole purpose of completing the manufacturing of the green Aircraft.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your letter dated August 2, 2002, and subsequent information received August 30, 2002.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.

The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.