



COLORADO

Department of Revenue

Taxation Division
Office of Tax Policy
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GIL-16-019

September 13, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Leased On-Demand Aircraft

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX (“Company”) a request for guidance regarding the applicability of the sales tax exemption set forth in § 39-26-711, C.R.S. to Company’s lease of its aircraft to a commercial airline company operating as an air-taxi in Colorado.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues, but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

Is the lease of aircraft by Company to a customer that is authorized by the FAA to provide charter airline and air-taxi services exempt from sales and use tax?

Background

Company is in the business of making long term leases of aircraft. Company and its aircraft are located outside Colorado but Company is contemplating basing its aircraft in Colorado for the purpose of leasing them to a customer (“Colorado Operator”) located in Colorado. Colorado Operator is primarily an on-demand air charter operator, but the FAA has granted it authority to operate as an air-taxi operator that can make no more than four regularly scheduled flights on a specific route between two or more points per week. Such an operator is classified by the FAA as an on-demand operator, as opposed to a scheduled operator.¹

Structure of Analysis

To determine whether the lease is subject to tax, the Department will examine the following questions:

1. Are aircraft tangible personal property taxable under § 39-26-104, C.R.S.?
 - a. Is Company eligible for the exemption under §39-26-711, C.R.S. and Department Rule 1 CCR 201-4, 39-26-711.1(a)?
 - b. Is Company eligible for the exemption under §39-26-711.8, C.R.S. for on-demand carriers?

Discussion

Colorado imposes sales tax on the sale and long term lease of tangible personal property, including aircraft.² A lease of more than three years (long term lease) is treated as a sale for Colorado sales tax purposes.³ Sales tax is calculated on the purchase price paid by the consumer.⁴ The lease payments made by the lessee are the purchase price for long term leases.

Colorado has two exemptions relating to sales and long term leases of aircraft and whether one of the exemptions applies to Company will depend on how the Company’s operations are classified by the Federal Aviation Administration (FAA). There are two basic FAA classifications for aircraft - “scheduled” operations and “on-demand” operations. The first exemption under which Company may qualify is in §39-26-711, C.R.S., which exempts sales and long term leases of aircraft used by a commercial airline for interstate commerce.⁵ A commercial airline is defined as an airline carrying freight or passengers on “regularly scheduled” flights for a fee

¹ The FAA distinguishes between two types of operators under Part 135 of their regulations: on-demand carriers and commuter carriers. Commuter carriers can operate 5 or more scheduled flights per week, and are classified as scheduled operators. On-demand carriers are classified as on-demand operators. Operators under Part 121 of the FAA regulations are scheduled operators.

² § 39-26-104, C.R.S.

³ § 39-26-102(23), C.R.S.

⁴ § 39-26-104, C.R.S. and § 39-26-102(7)(a), C.R.S.

⁵ § 39-26-711, C.R.S.

(known as “scheduled” operations).⁶ Colorado Operator’s operations are not classified by the FAA as “scheduled” operations but rather as “on-demand” operations. Company’s leases of the planes to Colorado Operator do not appear to qualify for the exemption under §39-26-711, C.R.S. because Colorado Operator is not a “scheduled” operator.

The second exemption under which Company may qualify is in §39-26-711.8, C.R.S., which exempts sales and long term leases of aircraft used for “on-demand” operations.–This exemption applies if the aircraft is in the state only for final assembly, maintenance, modification, or completion, the aircraft is removed from the state within 120 days after the date of the sale, and the aircraft is not present in the state for more than 73 days in any of the three calendar years following the sale.⁷ Company’s leases of the planes to Colorado Operator also do not appear to qualify for the exemption under §39-26-711.8, C.R.S. because Company’s description suggests that the planes will not meet the requirements of the on-demand carrier exemption.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/tax for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

⁶ Department Rule 1 CCR 201-4, 39-26-711.1(a). See, also, FYI Sales 85 “Sales Tax Exemption on Aircraft and Aircraft Parts”

⁷ § 39-26-711.8 C.R.S.