OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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July 21, 2004

Re: Our File Number LR-04-091. Scope of the sales tax exemption for various aircraft transactions.

Dear

Your recent request for information regarding the scope of the sales tax exemption for certain aircraft set out in Section 1355 of Title 68 of the Oklahoma Statutes and Commission rules has been forwarded to me for a response.

Facts:

Scenario One: *An individual or company owns an aircraft and occasionally rents it to a third party. No pilot is provided with the rental. The Aircraft Excise Tax has been paid pursuant to 68 O.S. § 6002.*

Scenario Two: *An individual or company owns an aircraft and occasionally rents it to a third party. No pilot is provided with the rental. The Aircraft Excise Tax has not been paid pursuant to 68 O.S. § 6002, because the aircraft was purchased or used by a commercial airline, as that term is defined by 68 O.S. § 6001(2) and is thus exempt from the levy of Aircraft Excise Tax by the provisions of 68 O.S. § 6003(5).*

Question:

*Is **sales tax** due in either of the Scenarios, on the rental of the aircraft?*

Responses One and Two:

No.
*Section 1355(9) of Title 68 of the Oklahoma Statutes provides an exemption from the sales tax for leases of aircraft upon which the owners have paid the aircraft excise tax levied by 68 O.S. § 6001 et seq. [**Scenario One**] or which are specifically exempt from such tax pursuant to the provisions of 68 O.S. § 6003 [**Scenario Two**]. The terms "lease" and "rent" are equivalent terms under current Commission rule, (See: 710:65-1-2, effective June 25, 2004) and the provisions of the Streamlined Sales Tax Act Agreement. Thus the duration of the lease/rental or its characterization by one term or the other is not relevant to the exemption.*

Facts:

Scenario Three: *The aircraft is exempt from Aircraft Excise Tax pursuant to 68 O.S. § 6003(5). The owner provides charter services with the aircraft which includes providing a pilot.*

Question:

*Is **sales tax** due on the transaction(s) described in Scenario Three?*

Response:

No.
*Although the provision of "charter services" can readily be classified as the sale of transportation services, - a class of service upon which Oklahoma levies a specific tax [See: 68 O.S. § 1354(A)(3)], Section 40116(b) of the United States Code expresses clear congressional intent to prohibit states from levying or collecting a tax...on ...(3) the sale of air transportation. Thus, no sales tax is due upon the transaction described in **Scenario Three** pursuant to this federal preemption.*

This response applies only to the circumstances set out in your request of May 18, 2004. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

If I can be of further assistance, please feel free to call me at (405) 521-3133.

Sincerely,

FOR THE OKLAHOMA TAX COMMISSION

Carolyn Swifthurst

Carolyn Swifthurst
Tax Policy Analyst

Enclosure: