OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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September 21, 2004

Re: Our File Number LR-04-102; Sales tax on the operations of an air freight transportation company.

Dear

This is in response to your inquiry concerning the sales tax implications of the operations of an air freight transportation company. I have set out your two questions below and each is followed by our response.

Question 1. "I have an air freight transportation company that began business earlier this month (home office in Texas). They are a certified air carrier. The air freight transportation company will lease their aircraft from another company. The lease is a 72 month term (not a capital lease). The aircraft will not be assigned to a state but will be swapped out and possibly fly routes in multiple states each month. Would the company have any sale tax liability in the state and would the lease (rental) payments on the aircraft be subject to sales tax?"

Our response to your question 1: There is an exemption in the Oklahoma Sales Tax Code at 68 O.S. Section 1355, for leases of aircraft where the Oklahoma Aircraft Excise Tax has been paid or if the aircraft is exempt from the payment of the Aircraft Excise Tax. There is an exemption in the Aircraft Excise Tax, 68 O.S. Section 6003, for aircraft that are to be used by "commercial airlines". The phrase "commercial airline" is defined in Section 6001 of the same title. It is not clear to me if the company about which you inquire would meet the definition of a "commercial airline" as required by the exemption statute. Please provide information as to the federal code section(s) under which the company will be operating so I can confirm that the company qualifies as a "commercial airline" for purposes of being exempt from Aircraft Excise Tax in Oklahoma. If the aircraft is exempt from the Aircraft Excise Tax , the lease payments would be exempt from sales tax if the lease were sourced to Oklahoma.

Question 2. "If an outside vendor performs maintenance on the aircraft, would the air freight company be tax exempt on parts and labor? The aircrafts (sic) will be maintained in the

state they are used and would not be brought back to Texas for maintenance. If they are tax exempt – what forms need to be filed to obtain an exemption certification."

Our response to your question 2: If the work is done at a "qualified aircraft maintenance facility" the sale of the repair parts would be exempt. Please see 68 O.S. Section 1357(18). The labor to repair aircraft in Oklahoma, if it is separately stated from the charges for the repair parts, would not be subject to sales tax. If the aircraft is brought into the state exclusively for the repairs, the aircraft weighs between 9,000 and 300,000 pounds gross takeoff weight, and the work is done at an "aircraft repair facility" as defined in 68 O.S. Section 1357(26), the repair parts may be purchased exempt from tax. The vendor of the parts would have to show, if requested by the Oklahoma Tax Commission, that the sale did meet the requirements set out in the statute and was properly exempted.

Please note that "aircraft repair facility" as defined in 68 O.S. Section 1357(26) is limited either to those that have invested $3 million to establish a new facility or to expand an existing facility since July 1, 1999 or to those that are a "manufacturer's authorized service facility".

This response applies only to the circumstances set out in your request of April 28, 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 contact me.

Sincerely,
OKLAHOMA TAX COMMISSION

Michael G. Pillow
Tax Policy Analyst