September 24, 2004

Re: Our File Number LR-04-141; Sales tax exemption for aircraft repair

Dear

This is in response to your inquiry concerning whether sales tax is due on the sale of aircraft parts sold as part of a repair to an aircraft that is based in another state and which is flown out of Oklahoma after the repairs are done.

There are two exemptions that may apply. The first is for aircraft parts sold at a "qualified aircraft maintenance facility". The other is for repair work done at an "aircraft repair facility". I have copied the language of the two paragraphs in 68 O.S. Section 1357 that contain the exemptions into this email:

> "There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:
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> > 18. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504;
> >
> > 26. Beginning July 1, 2002, sales of aircraft engine repairs, modification, and replacement parts, sales of aircraft frame repairs and modification, aircraft interior modification, and paint, and sales of services employed in the repair, modification and replacement of parts of aircraft engines, aircraft frame and interior repair and modification, and paint. The exemption provided by this paragraph shall be limited to aircraft repairs, modification, and replacement parts for aircraft weighing more than nine thousand (9,000) pounds gross take-off weight and less than three hundred thousand (300,000) pounds gross take-off weight and which aircraft are brought into this state exclusively for such repairs or modification. The exemption provided by this paragraph shall be limited to repairs or modifications made by an aircraft repair facility. As used in this paragraph, the term "aircraft" shall have the same meaning as

> such term is defined in Section 6001 of this title. The term "aircraft repair facility" shall mean any facility which either is an aircraft manufacturer's authorized service facility or a facility which repairs, modifies or replaces aircraft parts in which more than Three Million Dollars ($3,000,000.00) was invested to establish the new facility or expand an existing facility and which construction was commenced or was in progress on or after July 1, 1999; provided, amounts expended for research and development as defined in Sections 41 and 174 of the Internal Revenue Code with respect to modification of aircraft shall be included as amounts invested to establish a new facility or expand an existing facility for purposes of the investment threshold specified herein;" [68 O.S. Section 1357}

Whether the particular sale was correctly exempted is a question that can only be answered based on the facts of the particular transaction. Please note that labor charges made in connection with aircraft maintenance and repair, if they are separately stated from the charges for any parts that are sold, are not subject to sales tax in Oklahoma. There is only one "qualified aircraft maintenance facility" as delineated in paragraph #18 above in Oklahoma and I believe there are two qualifying "aircraft repair facilities". The Oklahoma Tax Commission does not have to issue any type of documentation, so the facilities are not required to establish their qualifications with the Oklahoma Tax Commission.

If a sale was exempt but the sales tax was paid, in error, the purchaser could get a refund of the sales tax paid in error from either the vendor or the Oklahoma Tax Commission. The refund must be requested within three years of the date the sales tax report which covered the time period in which such sale was made either was due or was paid, whichever occurred later in time.

This response applies only to the circumstances set out in your request of July 1, 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
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