



COLORADO
Department of Revenue
Taxation Division

Office of Tax Policy Analysis
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PLR 21-003

June 17, 2021

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Sales and use tax on aircraft brought into Colorado

Dear XXXXXXXXXXXX;

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX, ("Company A"), regarding sales and use taxes on aircraft, to the Colorado Department of Revenue ("Department") pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Is Colorado sales or use tax due on aircraft based in or brought into Colorado?

Conclusion

Colorado sales tax is not due on sales of aircraft whereby the purchaser takes possession of the aircraft outside of Colorado. Aircraft based in or brought into Colorado are subject to Colorado use tax.

Background¹

Company A, a [State A] limited liability company, operates as an on-demand air carrier service. Company A does not own the aircraft it uses. The aircraft are owned by Company B. Company A is 100% owned by Company B, which is a [State B] limited liability company.

The agreement between Company A and XXXXXXXXXXXX ("Company B") is an "Aircraft Charter Management Agreement," in which Company A, for Federal Aviation Administration ("FAA") purposes, is in operational control of the aircraft operated under Federal Aviation Regulations ("FAR") Part 91 and has "possession, command and control." Pertaining to flights under FAR

¹ This section generally recites the statements of fact set forth in the request as required by paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5. The recitation of particular facts in this section is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be redacted as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

Part 135, Company A has sole and exclusive operational control of the aircraft. The language for FAR Part 91 and FAR Part 135 is necessary to allow Company A to operate pursuant to various FAA regulations. Company A charges Company B a [nominal] per year management fee and a [nominal] conformity fee. Flight crew training, maintenance, and third-party maintenance are all billed at cost by Company A to Company B. All revenue earned from chartering is paid to and retained by Company B.

Company A recently opened a location, which comprises solely of hangar storage, in XXXXXXXXXXXX, Colorado. Company B has no locations in Colorado. Company A will be using the aircraft in Colorado to operate its on-demand air carrier services. The aircraft were acquired by Company B outside of Colorado. No sales or use tax has been paid by Company B to any state on the acquisition of the aircraft.

Discussion

Colorado imposes sales tax on retail sales of tangible personal property made within the state.² In general, a sale of tangible personal property is sourced to the location where the purchaser takes possession of the property.³ Since Company B took possession of the aircraft outside of Colorado, that sale is not subject to Colorado sales tax.

Colorado imposes a use tax for the privilege of storing, using, or consuming tangible personal property within the state.⁴ Use is sufficient for the imposition of the tax whenever the property is actually used or made available for use after the purchaser (or the purchaser's designee) takes possession of the property, even if such use is temporary.⁵ Additionally, use tax applies to the keeping, storing, withdrawing from storage, moving, installing, and to the performance any other act by which dominion or control over the property is assumed by the purchaser unless the property is otherwise exempt.⁶ The use of aircraft in Colorado to operate on-demand air carrier services is subject to Colorado use tax.

Section 39-26-711.8, C.R.S., authorized a use tax exemption for aircraft that meet certain criteria. One of the requirements for the exemption is that the aircraft will remain in the state only for the purpose of final assembly, maintenance, modification, or completion. Company B's aircraft are brought into and based in Colorado to operate its on-demand air carrier services. Also, the exemption does not apply after June 30, 2019. Company B's aircraft do not qualify for this exemption.

Miscellaneous

This ruling is premised on the assumption that Company A has completely and accurately disclosed all material facts, and that all representations are true and complete, and Company A has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company A's facts, representations, and assumptions. The ruling is null

² §§ 39-26-102(9) and -104(1)(a), C.R.S.

³ § 39-26-104(3)(a)(I), (3)(a)(II), and (3)(d)(II), C.R.S.

⁴ § 39-26-202(1)(b), C.R.S.

⁵ 1 CCR 201-4, Rule 39-26-202(3).

⁶ 1 CCR 201-4, Rule 39-26-202(3).

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and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

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

Thank you for your request.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.