

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-021

September 25, 2009

Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

Ladies and Gentlemen:

This is a request for a private letter ruling to ensure that the sale of a private aircraft between two out-of-state parties is not a taxable event under existing Utah State Code. This letter describes a typical scenario for the transaction in question and details the roles and relationships between the involved parties.

COMPANY, a STATE corporation, which plans to operate a fixed-based, aircraft maintenance/refurbishment operation in COUNTY, will have customers from out of state that bring their aircraft in for service. Frequently, a potential buyer will negotiate with an owner and consummate a deal in the State of Utah which results in the transfer of the title to the aircraft to the buyer. These negotiations are between the buyer and the seller and do not involve COMPANY. Following the transaction, both buyer and seller leave the state, buyer with aircraft in tow. Many other states, including STATE, have adopted what is called a “Fly Away Exemption.” This means that sales and use taxes are not imposed on the gross receipts of such transactions when the aircraft is delivered to a party whose business is located in another state.

Generally, aircraft owners will only take their business for such transactions and for general maintenance/refurbishment to an operation in a state where these transactions are not a taxable event – i.e., where a Fly Away Exemption is in effect. In order for COMPANY to successfully compete for business at its Utah operation it is necessary that the playing field for sales tax exemption be level with that of other states. COMPANY’s Utah business would be adversely affected should their customers incur sales taxes in connection with these transactions. In order for COMPANY to compete and be successful with its Utah operations it is necessary for it to have a level playing field with the Fly Away Exemption benefit available in other states.

UCA 59-12-104(9) exempts sales of a “vehicle” of a type required to be registered under the “motor vehicle” laws of the state

Does the requirement “registered under the motor vehicle laws” limit this exemption to only motor vehicles, or does the use of the term “vehicle” allow the sale of all types of vehicles to be exempt? The requirement in UCA 59-12-107(6)(b) that the tax shall be collected when the vehicle is titled or registered would support the exemption of aircraft sales that are not titled or registered in Utah.

On behalf of ORGANIZATION, CITY and COUNTY we appreciate your consideration in this matter.

Sincerely,

NAME, TITLE, ORGANIZATION
ADDRESS
PHONE

Cc: NAME 2, CITY
NAME 3, COUNTY
NAME 4, AGENCY
NAME 5, LEGISLATIVE BODY

RESPONSE LETTER

November 25, 2009

NAME
ORGANIZATION
ADDRESS

RE: Private Letter Ruling Request—The Sales and Use Tax Treatment of the Sales of Private Aircraft Occurring in Utah, Between Two Out-of-State Parties

Dear NAME:

You requested a ruling on behalf of ORGANIZATION, CITY, and COUNTY concerning the sales and use tax treatment of the sales of private aircraft occurring in Utah, between two out-of-state parties, where the aircraft is delivered to a party whose business is located in another state.

You explained, “Frequently, a potential buyer will negotiate with an owner and consummate a deal in . . . Utah which results in the transfer of the title to the aircraft to the buyer. . . . Following the transaction, both buyer and seller leave the state, buyer with aircraft in tow.” You also explained, “Many other states, including STATE, have adopted what is called a ‘Fly Away Exemption’ [under which] sales and use taxes are not imposed on the gross receipt of such transactions when the aircraft is delivered to a party whose business is located in another state.” During a telephone conversation, NAME 6 of ORGANIZATION explained that before the sale, the aircraft is flown into the state and that after the sale, the aircraft is flown out of the state and registered in another state where the new buyer is based.

You explained that the tax treatment of aircraft sales could affect COMPANY (“COMPANY”) a STATE corporation, which plans to operate a fixed-based, aircraft maintenance/refurbishment operation in COUNTY. COMPANY’S customers would include out-of-state aircraft owners who would bring their aircraft into the state for service. You provided, “Generally, aircraft owners will only take their business for [sales of aircraft] transactions and for general maintenance/refurbishment to an operation in a state where these transactions are not a taxable event—i.e., where a Fly Away Exemption is in effect.” You also provided that for COMPANY to successfully compete for business at a location in Utah, Utah must have a sales tax exemption for the sales of aircraft that is similar to the exemptions of the other states. You proposed that the exemption of Utah Code Ann. § 59-12-104(9) might apply.

I. Applicable Law

Utah Code Ann. § 59-12-103(1) imposes tax on “(a) retail sales of tangible personal property made within the state.”

Utah Code Ann. § 59-12-104(9) provides an exemption for certain sales of vehicles that are not registered and used in Utah.

Utah Code Ann. § 59-12-102(121)(a) states that “‘vehicle’ means the following that are required to be titled, registered, or titled and registered: (i) an aircraft as defined in Section 72-10-102”¹

Utah Code Ann. § 72-10-102(4) defines aircraft, stating: “‘Aircraft’ means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.”

Utah Code Ann. § 72-10-109(1)(a) states:

A person may not operate, pilot, or navigate, or cause or authorize to be operated, piloted, or navigated within this state any civil aircraft located in this state unless the aircraft has a current certificate of registration issued by this state through the county in which the aircraft is located.

Utah Code Ann. § 59-2-404, in the property tax chapter, states in part:

- (1) In accordance with Utah Constitution Article XIII, Section 2, Subsection (6), beginning on January 1, 2009, an aircraft, required to be registered with the state is:
 - (a) exempt from the [property] tax imposed by Section 59-2-103; and
 - (b) in lieu of the tax imposed by Section 59-2-103, subject to a uniform statewide fee of \$25.
- (2)
 - (a) The uniform fee shall be collected by the commission with the registration fee and distributed to the county in which the aircraft is based.
 - (b) A based aircraft is an aircraft which is hangared, tied down, or parked at the airport for a plurality of the year.

Utah Code Ann. § 41-1a-102(33), under the Motor Vehicle Act, defines “motor vehicle” as follows:

- (a) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.
- (b) "Motor vehicle" does not include an off-highway vehicle.

Utah Ann. Code § 59-12-104(13) provides an exemption for certain sales commonly referred to as isolated and occasional sales. Specifically, subsection 13(a)(ii) applies this exemption to persons who are “not regularly engaged in the business of selling that type of tangible personal property or product transferred electronically.” Section 59-12-104(13) continues, as follows in part:

¹ Language concerning § 59-12-102(121)(b) has been excluded because it does not apply to the facts of this ruling.

(b) this Subsection (13) does not apply if:

-
- (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of this state in which case the tax is based upon:
 - (A) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or
 - (B) in the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel being sold at the time of the sale as determined by the commission

II. Analysis

A sale of an aircraft is a taxable sale of tangible personal property under § 59-12-103(1)(a) unless an exemption applies. You mentioned that other states have a “Fly Away Exemption.” However, no such exemption exists under Utah law. You suggested that §§ 59-12-104(9) might apply to exempt the sales. Below, we analyze: first, this exemption and second, the isolated and occasional sales exemption of § 59-12-104(13).²

A. Aircraft Sales Cannot Be Exempt Under § 59-12-104(9).

The exemption of § 59-12-104(9) cannot apply because it is limited to “sales of a vehicle *of a type required to be registered under the motor vehicle laws of this state*” (emphasis added). Aircraft are registered under the Uniform Aeronautical Regulatory Act and not the Motor Vehicle Act. Furthermore, an aircraft is not a motor vehicle under the Motor Vehicle Act because an aircraft does not meet the definition of “motor vehicle”; an aircraft is not “intended primarily for use and operation on the highways.” *See* § 41-1a-102(33). Therefore, the exemption of § 59-12-104(9) cannot apply even if the sales of aircraft meet the other requirements of subsections (a) and (b).

B. The Aircraft Sales that You Described Are Likely Exempt Under § 59-12-104(13).

The exemption of § 59-12-104(13) for isolated and occasional sales requires that the sale not be of “a vehicle . . . required to be titled or registered under the laws of this state.” § 59-12-104(13)(b)(iv). For registration, § 72-10-109(1)(a) requires that a person’s “aircraft [have] a certificate of registration issued by this state” if the “person . . . operate[s], [etc.] within this state any civil aircraft *located* in this state” (emphasis added). The term “located” is not defined in statute. However, the Commission finds some guidance in the property tax statutes. Section 59-2-404 uses the term “based,” which the Commission finds to be similar, by definition, to the term “located.” Section 59-2-404(2)(a) requires that the commission distribute the uniform fee to the county in which the aircraft is based. Section 59-2-404(2)(b) explains that an aircraft is based where it is hangared, etc. for a plurality of the year. A plurality is an amount greater than any other amount within a total; it may be less than half of the total. The Commission interprets

² There is another exemption found in § 59-12-104(33)(a) for authorized carriers. However, there are no facts suggesting that this exemption applies to you.

“located” as used in § 72-10-109(1)(a) to mean where an aircraft is hangared, based, or parked for more than a minimal amount of time.

The airplanes that you have described are not required to be titled or registered under the laws of this state because they are not located in Utah. Rather, the aircraft are physically in Utah for only a short period of time, and for the balance of the year, they are located and registered elsewhere. If the sales of aircraft meet the additional requirements contained in Section 59-12-104(13)(a) and (b)(i)-(iii), the sales are exempt. In your case, you have presented no facts suggesting that these other requirements have not been met.

III. Conclusion

The sale of a private aircraft between two out-of-state parties, where both buyer and seller leaves the state, the buyer with aircraft in tow, is not a taxable event under the existing Utah State Code as long as the requirements of § 59-12-104(13) have been met. The exemption of § 59-12-104(9) for motor vehicles does not apply. Our conclusions are based on the facts as described and the Utah law currently in effect. Should the facts be different or if the law were to change, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
09-021