

This letter concerns the rolling stock exemption for aircraft. See 86 Ill. Adm. Code 130.340. (This is a PLR).

October 12, 2012

Dear:

This letter is in response to your letter dated February 28, 2012 in which you requested a Private Letter Ruling, and the supplemental information provided on June 25, 2012 and July 5, 2012. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to Mr. & Mrs. Z for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither Mr. and Mrs. Z nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

This law firm represents Mr. & Mrs. Z, husband and wife, who reside at STREET in CITY. Under the attached power of attorney, the Zs have instructed this firm to request a Private Letter Ruling regarding the applicability of the rolling stock exemption to the Use Tax in connection with certain aircraft interests recently purchased and owned jointly by the Zs.

#### Factual Basis for Ruling Request

On MONTH1 XX, 20XX, the Zs purchased from COMPANY1, a STATE company, a minority fractional (i.e., undivided) interest (each, a “share”; the “shares”) in two separate aircraft – NXX (X%) and NXXX (XX%) – being operated in the fractional aircraft ownership program (the “Program”) operated by COMPANY2. A corporate affiliate of COMPANY1, COMPANY2 is certified by the U.S. Federal Aviation Administration as a commercial air carrier, holding certificate #X. The purchase prices for the shares were \$X (NXX) and \$X (NXXX).

Pursuant to the Program agreements, which were effective as of the purchase date and extend for X years, possession and control of the Zs’ aircraft were transferred to COMPANY2 and, along with a pool of some X+ aircraft in the COMPANY1 fleet, are operated by COMPANY2 and made available to the Zs and to other members of the Program on demand. The number of annual flight hours available to Program members

corresponds to the size of the fractional interests they own, respectively, in the aircraft. For example, a 1/8 share entitles the member to 100 hours per year.

In addition to the purchase price paid to COMPANY1 for the share, the Program member pays to COMPANY2 a monthly management fee and an hourly usage fee. Members sign up for a term typically of X years, at the end of which COMPANY1 repurchases the share for fair market value less a fee.

Program Members may not partition their share or otherwise sell it on the open market. Nor may they use the share other than under the management and control of COMPANY2. Under certain circumstances, the Program may force them to sell the share back to COMPANY1 before the end of the term. Members have a limited right to transfer the share to a 3<sup>rd</sup>-party, but subject to all the restrictions of the Program.

Members may have their flights operated under Part 135 or Part 91K of the Federal Aviation Regulations ("FAR"). Under FAR Part 135 COMPANY2 is deemed to be the operator of the flights. Under FAR Part 91K, the Member is deemed to be the operator of the flights. The Z' shares are operated under FAR Part 135.

Pursuant to the Program agreements, Program aircraft are also made available to COMPANY2 for use in the PROGRAM, which is owned and operated by COMPANY2, and for COMPANY2's use in its 3<sup>rd</sup>-party charter operations. Under PROGRAM, members buy blocks of flight time (e.g., 25 hours or 50 hours) rather than interests in aircraft. PROGRAM is essentially a charter operation, where customers pay for flight time by the hour, which they acquire with a bulk purchase discount. Charter customers pay for flights one at a time, typically by the hour. All PROGRAM flights and all charter flights are operated under FAR Part 135, with COMPANY2 retaining all revenues.

The closing and delivery of the Zs' shares occurred outside the state of Illinois. Pursuant to the respective Program agreements, the Zs were permitted to commence utilizing the shares on but not before MONTH2 X, 20XX. Prior to the commencement date, according to COMPANY2 both aircraft entered Illinois: NXXX on MONTH3 X, 20XX and NXX on MONTH3 X, 20XX. The aircraft were not brought into the state for the benefit of the Zs but in connection with the carriage for hire of other members of the Program or PROGRAM.

On or about MONTH2 XX, 20XX, through this office, the Zs filed Forms RUT-25, one for each share, with the Illinois Department of Transportation, Aeronautics Division, wherein they claimed exemption from the Illinois Use Tax on the shares under the rolling stock exemption.

In the event the Department of Revenue rules as herein requested that the rolling stock exemption applies to the shares, for liability limitation purposes the Zs intend to transfer title to the shares to a newly formed Limited Liability Company (the "LLC") they would own.

To the best knowledge of the Zs and of this law firm:

- The Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, and neither the taxpayer nor any representative has previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.
- There is no audit or litigation pending with the Department regarding this issue and the Zs.

#### Rulings Requested

We are writing to seek the following rulings on behalf of our clients:

1. The Zs' shares are exempt from the Illinois Use Tax because the shares constitute rolling stock for purposes of the rolling stock exemption to the Use Tax (35 ILCS 105/3-55(b)).
2. The transfer of the shares to an LLC and the LLC's subsequent usage thereof would be exempt from the Use Tax under the rolling stock exemption. Please indicate whether the LLC should file RUT-25s to report such transfers.

#### Legal Justification for Rulings

The Illinois rolling stock exemption is codified at 35 ILCS 105/3-55(b), which states in pertinent part:

Sec. 3-55. Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for-hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for-hire...

As required under 35 ILCS 105/3-55(b), both of the subject aircraft have been and are operated regularly and frequently by an interstate carrier (COMPANY2) in the carriage of persons and property in interstate commerce for hire. In support of the applicability of the rolling stock exemption, attached please find:

- From COMPANY2, a 6-month statement of operations of NXXX and NXX, which shows extensive interstate operations, all of which is performed by COMPANY2 for monetary compensation,
- Bills of Sale of the shares to the Zs,
- Evidence of COMPANY2's air carrier certificate, and
- The Zs' RUT-7s.

Based on research and telephone inquiries of the Department of Revenue, Audit Division, we are unaware of any judicial or administrative authority directly on point to the subject facts, one way or the other. However, we did find administrative rulings – UT 09-5 and UT 09-8 – discussing 35 ILCS 105/3-55(b) and the elements and proofs required to meet the rolling stock exemption to the Use Tax. We believe the rulings would have held for the applicability of the rolling stock exemption if based on the foregoing facts concerning the Zs.

Please contact the undersigned directly with your response and if you require any additional information.

**DEPARTMENT’S RULING:**

The Illinois Use Tax does not apply to the use in this State of tangible personal property by interstate carriers for hire as rolling stock moving in interstate commerce, or by lessors under leases of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. See 35 ILCS 105/3-55(b) and 86 Ill. Adm. Code 130.340(a). In addition, the Use Tax does not apply to the use in this State by owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. See 35 ILCS 105/3-55(c), and 86 Ill. Adm. Code 130.340(a).

In order to claim the rolling stock exemption for an aircraft, the carrier must be able to document that it has authority to operate as an interstate carrier for hire and show, from its books and records, that it does in fact so operate on a regular and frequent basis. Absent the ability to document that the carrier has authority to operate as an interstate carrier for hire and actually operates the aircraft in a manner that qualifies for the exemption, no rolling stock exemption is available.

It is the Department’s understanding that the Air Carrier Certificate issued by the Federal Aviation Administration issued to COMPANY2 authorizes the certificate holder to operate as an air carrier and conduct common carriage operations in accordance with the Part 135 of the Federal Aviation Regulations (49 C.F.R. Part 135). In addition, the travel logs that were submitted regarding the two aircraft at issue evidence that each aircraft has moved in interstate commerce for hire on a regular and frequent basis.

Based on the documentation provided, and only on the condition that the carrier continues to be certified as an air carrier conducting common carriage operations in accordance with Part 135 of the Federal Aviation Regulations with respect to each aircraft, and on the further condition that each aircraft continues to move in interstate commerce for hire on a regular and frequent basis, the Z’s fractional ownership interest in each aircraft at issue here meets the requirements as rolling stock exempt from Use Tax liability.

With respect to the transfer from the Z’s to the newly formed Limited Liability Company (the “LLC”), the initial issue is what tax would govern this transaction. Based on our understanding that the Z’s are not in the business of selling aircraft, the transfer of the interests in the aircraft from the Z’s to the LLC would be an occasional sale that is not subject to Retailers’ Occupation Tax or Use Tax liability.

The non-retail transfer of the interests in an aircraft, however, would be subject to the Aircraft Use Tax. See 35 ILSC 157/10-1 et seq. and 86 Ill. Adm. Code 152.101 et seq. The proper form to file for the non-retail transfer of an aircraft is the RUT-75. With respect to the taxability of that potential transfer, only on the condition that each aircraft continues to be used in a manner that qualifies for the exemption as discussed in detail above, we believe that the transfer from the Z's to the LLC would qualify for the rolling stock exemption as well.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules, or the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Terry D. Charlton  
Chairman, Private Letter Ruling Committee