ST 12-0062-GIL 12/20/2012 AIRCRAFT USE TAX

> Aircraft Use Tax liability is incurred on aircraft acquired by gift, transfer, or non-retail purchase. See 86 Ill. Adm. Code 152.101. (This is a GIL.)

December 20, 2012

Dear:

This letter is in response to your letter dated July 10, 2012, in which you request information. 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 to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

> I am an attorney who represents four individuals who are currently individually FAA registered owners of a small single-engine AIRCRAFT, which they use for their personal recreational use. Sales tax was originally PAID by each of the four partners at the time of the aircraft's initial purchase. Now, for the principal purposes of limiting their personal liability, they would like to set up a corporation (or LLC), and transfer title or ownership of the aircraft into a four-member Illinois LLC – that the SAME FOUR individuals will thereafter own. I believe that this is a non-taxable "transfer," rather than a "sale." I reviewed the Illinois Department of Revenue website, and the Ill. Admin. Code, Sec. 130.120, and publication 104; and 35 ILCS Sec. 120/1 to 120/4, but nothing like this was described. However, this cannot be the first time something like this has occurred. Therefore, I would like to request an Opinion or ruling with reference to the section of the code that is involved before proceeding.
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> The question is: "Would the mere transfer title of a recreational aircraft from an individual bases [sic] into a limited LLC/corporate form of ownership, when the LLC is composed of the same, identical individuals constitute or trigger a "sale" for which a Sales Tax (or Use Tax) would arguably be required by the Illinois Department of Revenue?"
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> There would be NO actual "closing out" or termination of their 4 individual equitable interests in the asset, but rather a mere change in the form of title in which they hold that same ownership interest. The same four individuals would each have one of four shares of the corporate form of ownership. Their principal motivation is that they are each "high worth" individuals, and they want the added "corporate protection" of their personal assets for the operation of the aircraft by anyone but themselves.
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> Your attention to this matter would be appreciated.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

A person does not incur Retailers' Occupation Tax liability on the gross receipts from an isolated or occasional sale. See 86 Ill. Adm. Code 130.110 regarding "Occasional Sales." Consequently, the purchaser of that tangible personal property does not incur a corresponding Use Tax liability on that purchase. See 86 Ill. Adm. Code 150.101(d). As a general proposition, the occasional sale exemption is only available when a person (as defined in Section 1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1) purchases an item and then, after using the item, disposes of it by selling it. See 86 Ill. Adm. Code 130.110. However, the sale will not qualify as an isolated or occasional sale if the person holds himself out as being engaged in the retail sale of that item or similar type of tangible personal property.

Even though a purchaser may not incur a Use Tax liability on a purchase of tangible personal property in an occasional sale transaction, the purchaser of specific types of tangible personal property may still incur a tax liability in this State under the Aircraft Use Tax Law (35 ILCS 157/10-1 et. seq.), Watercraft Use Tax Law (35 ILCS 158/15-1 et. seq.), or Vehicle Use Tax (625 ILCS 3/3-1001 et. seq.).

Under the Aircraft Use Tax Law, a tax is imposed on the privilege of using, in this State, any aircraft as defined in Section 3 of the Illinois Aeronautics Act acquired by gift, transfer, or purchase. This tax does not apply if the use of the aircraft is otherwise taxed under the Use Tax Act. 35 ILCS 157/10-15. The tax is imposed on the use of aircraft in this State regardless of whether the aircraft is actually registered under the Illinois Aeronautics Act. See 86 Ill. Adm. Code 152.101(a).

For general information purposes, the transfer of an aircraft from individual owners to a newly formed corporation is a taxable event. This result is because the aircraft is being transferred from one legal entity to another (from persons to a corporation). Aircraft Use Tax liability is incurred on aircraft acquired by gift, transfer, or non-retail purchase. See 86 Ill. Adm. Code 152.101. The fact that the beneficial ownership of the aircraft will not change after the transfer does not change the outcome under the Aircraft Use Tax Law.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Samuel J. Moore
Associate Counsel