

ST 20-0010-GIL 06/19/2020 AIRCRAFT USE TAX

This letter concerns the tax liabilities involving the purchase of a homebuilt aircraft kit. See 86 Ill. Adm. Code 152.101. (This is a GIL).

June 19, 2020

Dear Xxxx:

This letter is in response to your letter dated January 18, 2020, in which you requested 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](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

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

Based on an advice from NAMEI (Illinois Department of Revenue, ROT Discovery) I Kindly request your ruling to confirm the IL Use Tax exemption for my personal experimental aircraft (US FAA: NXXXXX).

Here is the history in points with some explanation of each point:

- I am a Jordanian Citizen (non-US Citizen, Non-Resident) that was living in the United Kingdom (UK Immigrant Resident) in 20XX.
- On April 20XX, I purchased an experimental 2-seater airplane that was UK registered and flying in the UK. (UK CAA: X-XXXX)
- I transferred ownership and was regularly flying the airplane starting April 20XX.
- On October 20XX; my family (Wife and 3 Children) and I were fortunate to be accepted to immigrate permanently to the United States.
- On November 20XX, we made our “Immigrate first Landing” trip to USA to finalize the paperwork and submit the required documents issue our Green Cards. This was just for 10 days trip to formalize the acceptance as there was a time to arrive to USA to submit the paperwork.

- Our actual move and residency in IL was April 20XX. This is when we selected IL as our residence and was able to reside in IL long enough to be considered IL residence.
- The airplane was put into a sea-freight container and was shipped to the USA a few days before our final arrival to USA (April 20XX). The airplane status was entered and declared into USA port as “New Immigrant used personal items” along with other personal belonging that we moved from UK to US.
- Airplane arrived in the USA in May 20XX and was put in Hangar at AIRPORT. Airplane was still under UK Registration with valid UK registration and Permit to Fly.
- I started the N-Number conversion in August 20XX. Someone outside the USA wanted to buy it and the airplane was just on-hold hangered waiting for the sale to finalize and when it did not happen, the application to convert it to USA registration started on July 20XX and completed by August 20XX.
- Once the aircraft was registered into the FAA system (NXXXXXX) with IL address, I received a letter from REGISTRAR (IL Aircraft Registration) requesting to complete the registration for IL. I replied to REGISTRAR explaining that the airplane is not yet airworthy **(See copy of my email and REGISTRAR’s Reply on Sept 20XX)**. I spoke with NAME over the phone and I was under the impression that the Aircraft is exempted. **(See email copy)**
- The aircraft got the Airworthiness Certificate in July 20XX. Due to my misunderstanding and oversight on my part; I did not complete the IL registration. It slipped my mind and I truly thought we completed that part. Though I do declare the airplane only flew **ONE TIME** since it got the airworthiness to remove the restrictions on the airplane and it’s been hangered since then with no flight, as I do own another experimental airplane which is registered in IL & Tax paid.
- While renewing the other airplane registration; and trying to also pay for IL registration for NXXXXXX, i discovered that the airplane was still pending registration and I was unable to pay for the airplane online. I emailed REGISTRAR with the fact **(See Copy of that email attached)**
- I’ve sent the documents to NAME showing I’ve owned the airplane, and flew it for more than 3 months before becoming US Residence, he suggested to request a ruling to confirm.

From the above; I’ve owned, operated and used the aircraft for personal use while living in the UK before knowing that we will be immigrating to the USA. I have imported the airplane as part of personal used items belonging to new immigrants moving to the USA for the first time. I believe I do not own IL Use Tax on this item and would like your confirmation of this fact to allow me to complete the IL registration of this aircraft.

Please find attached **(Please note, Dates in UK/EU are Day/Month/Year)**

1- Signed Sale Agreement. (9th April 20XX).

2- UK CAA registration confirming change of ownership completed (April 24th 20XX)

- 3- My US Green Card showing Residence Since: Nov 7th 20XX. (Actual permanent move was April 20XX)
- 4- Insurance Cert in UK for airplane to fly;
- 5- Photo of the airplane while in the UK under UK registration; X-XXXX.
- 6- Copy of Email communication on Sept 20XX.
- 7-Copy of Email sent on Dec 20XX about my oversight to continue the registration of my airplane in IL.

#### **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. 86 Ill. Adm. Code 130.101. 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. 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 reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. 86 Ill. Adm. Code 150.130.

A transfer of airplanes in Illinois between two parties, neither of whom is a retailer, is subject to the Aircraft Use Tax Law, not the Use Tax Act. (35 ILCS 157/10-1 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 after June 30, 2003. 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).

It is the Department's position that whether the acquisition of an aircraft kit is considered the acquisition of an aircraft for purposes of the Aircraft Use Tax Law depends on whether a certificate of airworthiness has been issued by the Federal Aviation Administration. If a certificate of airworthiness has not been issued for the aircraft kit (regardless of the state of completion of the aircraft), the acquisition of the aircraft or aircraft kit is not subject to the provisions of the Aircraft Use Tax Law. If an airworthiness certificate has been issued for that aircraft and the aircraft is acquired from a non-retailer, the acquisition of the aircraft is subject to the provisions of the Aircraft Use Tax Law. Once an airworthiness certificate has been issued by the FAA for an aircraft, that "aircraft" remains an aircraft for purposes of the Aircraft Use Tax Law regardless of whether or not it is airworthy at the time of acquisition.

The facts presented in your letter indicate you did not purchase the aircraft in Illinois. According to the Aircraft Sales Agreement, the aircraft was constructed as a "homebuilt" and purchased from an individual in the United Kingdom in April 20XX. It was brought into Illinois in May 20XX and stored at the AIRPORT near CITY, Illinois. At the time it was brought into Illinois it was not airworthy and was not subject to Aircraft Use Tax. The aircraft received its airworthiness certificate in May 20XX, at which point it was subject to Aircraft Use Tax.

I hope this information is helpful. 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.

Very truly yours,

Richard S. Wolters  
Associate Attorney

RSW:bkl