

If an air carrier carries persons or property for hire in interstate commerce under the authority of its Part 135 certificate (Part 135 of the Federal Aviation Regulations; 14 C.F.R. Part 135), that operation may be included in the trips or miles that qualify the aircraft to meet the definition of "use as rolling stock moving in interstate commerce." See 35 ILCS 120/2-51; 86 Ill. Adm. Code 130.340. (This is a GIL.)

December 7, 2022

NAME/ADDRESS

Dear Mr. XXX:

This letter is in response to your letter dated August 11, 2021, 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 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:

RE: Aircraft owner flights qualifying for Rolling Stock Exemption

Dear Sir/Madam:

Our office needs your assistance in determining whether aircraft owner flights, flown under 14 CFR 135 in interstate commerce, would count towards hours flown in determining the 50% threshold for qualifying the aircraft for the Illinois Rolling Stock exemption under 35 ILCS 120/2-5 (13).

*Interstate commerce: Commercial airlines operating in interstate commerce are eligible for the rolling stock exemption and can buy tax-free items such as the airplanes themselves and parts and accessories which become permanent part [sic] of the planes. **[[ILCS Chapter 35 §120/2-5(13); Ill. Admin. Code 86 §130.340(b).]***

*For aircraft purchased on or after January 1, 2014, use as "rolling stock moving in interstate commerce" occurs when, during a 12-month period, the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the exemption must make an election at the time of purchase to use either the trips or mileage method and document that election in their books and records. If no election is made, the person is deemed to have chosen the mileage method. Flight hours may be used in lieu of recording miles in determining whether the aircraft meets the mileage test. Property purchased on or after January 1, 2014, for the purpose of being attached to aircraft as a part thereof qualifies as rolling stock moving in interstate commerce only if the aircraft to which it will be attached qualifies as rolling stock moving in interstate commerce under the test set forth above, regardless of when the aircraft was purchased. Persons who purchased aircraft prior to January 1, 2014 will make an election to use either the trips or mileage method and document that election in their books and records for the purpose of determining whether property purchased on or after January 1, 2014 for the purpose of being attached to aircraft as a part thereof qualifies as rolling stock moving in interstate commerce. **[ILCS Chapter 35 §105/3-61(e); ILCS Chapter 35 §115/2d(e); ILCS Chapter 35 §110/3-51(e); ILCS Chapter 35 §120/2-51(e).]** The election to use either the trips or mileage method will remain in effect for the duration of the purchaser's ownership of that item. **[ILCS Chapter 35 §105/3-61(f); ILCS Chapter 35 §115/2d(f); ILCS Chapter 35 §110/3-51(f); ILCS Chapter 35 §120/2-51(f).]***

Earlier this year, the Internal Revenue Service issued final regulations effective January 14, 2021, which in summary allows an aircraft owner to have his/her flights flown under 14 CFR 135 without incurring the Federal Air Transportation Excise Taxes (FET) of 7.5% of trip cost plus \$4.30 per passenger segment fee. We have attached a summary of the final IRS regulations for your review.

As a result of the IRS final regulations, our office has received numerous requests to opine on whether aircraft owner flights if flown under 14 CFR 135 would count toward the 50% Rolling Stock Exemption threshold. If so, since the owner flights may or may not be separately invoiced, the concern is what documentation will the Illinois Department of Revenue request upon audit to determine if aircraft usage qualifies for the Rolling Stock Exemption since no FET will be invoiced to the owner for his/her trips. The IRS Final Regulations do not require that the owner be "separately billed" for chartering his/her own aircraft - just that the aircraft owner (or lessee) pay for the cost of the flight.

Thank you in advance for your assistance. If you should have any question, or need any clarity in reference to the above, please do not hesitate to contact me.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax and Use Tax do not apply to sales to owners, lessors, or shippers of tangible personal property used by interstate carriers for hire as rolling stock moving in interstate commerce. See 35 ILCS 120/2-5(13) and 35 ILCS 105/3-55(c). The Department's rules governing the rolling stock exemption are found at 86 Ill. Adm. Code 130.340.

For aircraft purchased on or after January 1, 2014, "use as rolling stock moving in interstate commerce" occurs when, during a 12-month period, the aircraft has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the exemption must make an election at the time of purchase to use either the trips or mileage method and document that election in their books and records. If no election is made, the person is deemed to have chosen the mileage method. For aircraft, flight hours may be used in lieu of recording miles in determining whether the aircraft meets the mileage test. In addition, property purchased on or after January 1, 2014 for the purpose of being attached to aircraft as a part thereof qualifies as rolling stock moving in interstate commerce, but only if the aircraft to which it will be attached qualifies as rolling stock moving in interstate commerce under the test in effect at the time of the purchase of the property, regardless of when the aircraft was purchased. See 35 ILCS 120/2-51(e). The election to use either the trips or mileage method will remain in effect for the duration of the purchaser's ownership of the aircraft. See 35 ILCS 120/2-51(f).

In general, if an Air Carrier Certificate is issued by the Federal Aviation Administration authorizing the certificate holder to operate as an air carrier and conduct common carriage operations in accordance with Part 135 of the Federal Aviation Regulations (14 C.F.R. Part 135), such a certificate is an indication that the carrier is authorized to conduct for-hire operations. If an air carrier carries persons or property for hire in interstate commerce under the authority of its Part 135 certificate, that operation may be included in the trips or miles that qualify the aircraft to meet the definition of "use as rolling stock moving in interstate commerce." Qualifying trips or miles may include an arm's-length transaction between an aircraft owner and a separate legal entity that provides aircraft management services consisting of the transportation of the aircraft owner for hire on the aircraft under Part 135 of the Federal Aviation Regulations, assuming all other conditions of the exemption are met. Generally, a flights provided at cost is not considered an arm's-length transaction.

COMPANY/NAME

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As with any rolling stock exemption, even if the flight is exempt under 26 U.S.C. §4261(e)(5) from the federal air transportation excise tax, taxpayers must document qualifying trips or miles. We are unable to provide specific documentation requirements in the context of a General Information Letter, but, in addition to any other documents that evidence qualifying trips or miles that taxpayers retain in their records, we note that 26 C.F.R §49.4261-10 provides guidance for documenting the exemption from the federal air transportation excise tax. That guidance may assist in record-keeping for the rolling stock exemption.

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.

Very truly yours,

Samuel J. Moore
Associate Counsel

SJM:rkn