**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-147** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Application of sales tax on the purchase and delivery of aircraft in Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **09/30/1998** |

**Body:**

Office of Policy & Research

September 30, 1998

XXXXXXXXXXXXXXXXXXXXX
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Dear XXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated August 6, 1998. This is a private letter ruling pursuant to Kansas Administrative Regulation 92-19-59.

In your letter you stated that your firm represents XXXXXXXXX, (the "Taxpayer"), a company organized under the laws of Switzerland, in connection with the purchase of the new aircraft in the State of Kansas. You request a private letter ruling, pursuant to K.S.A. 79-3646 and K.A.R. 92-19-59, that states the purchase of the aircraft (the " Transaction") is exempt from sales and compensating tax under applicable Kansas law.

The following information was supplied by you:

The Taxpayer is a Swiss company having its principal place of business in XXXXXXXXX, Switzerland. The Taxpayer is engaged in the business of owning the aircraft.

In 1993, XXXXXXXXXXXXXX, Inc.(“XXXXXXXXXXXXXX") entered into an agreement (the "Aircraft purchase agreement") with XXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXX. ("XXXXXXXXXXXXXX") for the purchase of a new XXXXXXXXXXXXXX aircraft (the "Aircraft"), the delivery of which will take place in the State of Kansas. In 1997, XXXXXXXXXXXXXX Company ("XXXXXXXXXXXXXX") entered into an agreement with XXXXXXXXXXXXXX to take over the purchase of the Aircraft from XXXXXXXXXXXXXX. Neither XXXXXXXXXXXXXX nor XXXXXXXXXXXXXX is related to the Taxpayer, or, to the best knowledge of the undersigned, a resident of Kansas. In 1998, the Taxpayer entered into an agreement with XXXXXXXXXXXXXX to take over the purchase of the Aircraft from XXXXXXXXXXXXXX. Transactions such as these are ordinarily effected through direct assignment of the aircraft purchase agreement by the original contract purchaser to the transferee, or by a transferee of the original contract purchaser to a subsequent transferee, as the case may be. However, XXXXXXXXXXXXXX has refused to permit the original contract purchaser, XXXXXXXXXXXXXX, to assign the Aircraft Purchase Agreement to XXXXXXXXXXXXXX or to the Taxpayer. Consequently, upon delivery of the Aircraft in Kansas, the Aircraft will be sold by XXXXXXXXXXXXXX to XXXXXXXXXXXXXX, the original contract purchaser, in accordance with the Aircraft Purchase Agreement. XXXXXXXXXXXXXX. will simultaneously transfer the Aircraft to the Taxpayer, or, in the alternative, to XXXXXXXXXXXXXX, in which case, XXXXXXXXXXXXXX will simultaneously transfer the Aircraft to the Taxpayer. Each transfer of the Aircraft will be evidenced by a bill of sale from the transferor or to the transferee. Neither XXXXXXXXXXXXXX nor XXXXXXXXXXXXXX intends to base the Aircraft in Kansas or to register the Aircraft in its name or otherwise with the United States Federal Aviation Administration or with the State of Kansas prior to transferring the Aircraft. Within 10 days after taking delivery of the Aircraft from XXXXXXXXXXXXXX or XXXXXXXXXXXXXX, as the case may be, the Taxpayer will export the Aircraft to Switzerland, where the Aircraft will be registered. Taxpayer intends to operate the Aircraft outside the United States.

If XXXXXXXXXXXXXX were to permit XXXXXXXXXXXXXX to assign the Aircraft Purchase Agreement directly to the Taxpayer, it is the Taxpayer's position that the purchase of the Aircraft by the Taxpayer would be exempt from (i) sales tax under K.S.A. 79-3606(k) or, in the alternative, K.S.A. 79-3606(g), and (ii) Compensating tax (i.e., use tax) under K.S.A. 79-3704(d). K.S.A. 79-3606(k ), in relevant part, exempts from sales tax, "any. . . aircraft sold to a bona fide resident of another state, which. . . aircraft is not to be registered based in [Kansas] for more than 10 days." The Taxpayer is a bona fide resident of XXXXXXXX, Switzerland. Within ten days after purchasing and taking delivery of the Aircraft in Kansas, the Taxpayer will export the Aircraft to Switzerland when the Aircraft will be registered. In the alternative, K.S.A. 79-3606(g), in relevant part, exempts from sales tax, "all sales of aircraft, aircraft parts, replacement parts and services employed in the remanufacture, modification and repair of aircraft for use outside of the United States." As indicated above, the Taxpayer intends to export the Aircraft to Switzerland for use outside the United States.

Due to the aircraft manufacturer's refusal to allow the original contract purchaser, XXXXXXXXXXXXXX, to assign the Aircraft Purchase Agreement directly to the Taxpayer, must structure the transaction as a series of simultaneous transfers of the Aircraft from XXXXXXXXXXXXXX to XXXXXXXXXXXXXX, and from XXXXXXXXXXXXXX to the Taxpayer, or, alternatively, from XXXXXXXXXXXXXX to XXXXXXXXXXXXXX, and from XXXXXXXXXXXXXX to the Taxpayer. The intermediate transfers of the Aircraft by XXXXXXXXXXXXXX and possibly by XXXXXXXXXXXXXX are contemplated solely for the purpose of facilitating the ultimate sale of the Aircraft to the Taxpayer. Nevertheless, if each the above-describing transfers of the Aircraft is regarded by the Kansas Department of Revenue ("The Department") as a separate sale of the Aircraft, subject to Kansas sales tax, it is not clear that the Transaction taken as a whole, would be exempt from sales tax under applicable Kansas law. It is the Taxpayer's position that, despite the structure of the Transaction as a series of transfers of the Aircraft, the Transaction, in substance, is a sale of the Aircraft from XXXXXXXXXXXXXX to the Taxpayer, and, therefore, should be treated, for Kansas sales tax purposes, as a single transaction, exempt from sales tax under applicable Kansas law. K.S.A. 79-3704(d) provides, in relevant part, the provisions of the Kansas compensating tax do not apply to the "use, storage or consumption of any article the tangible personal property brought into or used within the state of Kansas is such article would not have been subject to the provisions of the retailers’ sales tax act of [Kansas]. . . " It is a Taxpayer's position that the transaction should be treated as exempt from sales tax under applicable Kansas law and, therefore, should also be treated as exempt from use tax under applicable Kansas law.

After reviewing the facts of your letter, the Department is in agreement that the simultaneous sale and delivery of the airplane in Kansas is exempt from Kansas retailers’ sales tax, if the following conditions occur. Each entity with the exception of XXXXXXXXXXXXXX, in the chain of ownership is a nonresident of Kansas and the airplane is removed from the State of Kansas within ten days from the date of sale from XXXXXXXXXXXXXX to XXXXXXXXXXXXXX.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 10/06/1998 Date Modified: 10/10/2001**