

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-06(20)S
Sales Tax
June 27, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S051116A

On November 16, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from Sales Tax Plus, Inc., 3 Capri Drive, Rochester, New York, 14624-1313.

The issue raised by Petitioner, Sales Tax Plus, Inc., is whether an aircraft used by Petitioner's client in the conduct of its pipeline inspection business qualifies as a commercial aircraft for sales tax purposes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner's client (Client) will be engaged in the business of detecting leaks in underground gas pipelines. To this end, Client will lease a Cessna 208B aircraft. Client will use the aircraft along with camera equipment and other tangible personal property in the conduct of its business. Client will fly the airplane over pipelines using the equipment to detect leaks. The equipment consists primarily of lasers, which are used to collect data indicating leaks in the pipelines, and equipment used to store the digital data and images that are created using the lasers.

Currently, the Client is focusing on the development of the leak detecting system. The goal is advancing technology and developing new products which can be commercialized. At that time, Client will use the aircraft in the conduct of its business.

Applicable law

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(17) Commercial aircraft. Aircraft used primarily (i) to transport persons or property, for hire, (ii) by the purchaser of the aircraft primarily to transport such person's tangible personal property in the conduct of such person's business, or (iii) for both such purposes.

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(21) Commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines.

Opinion

Client will lease a Cessna 208B aircraft for use in facilitating its inspection of gas pipelines. It does not appear that Client will use the aircraft to transport persons or property for hire. However, an aircraft may also qualify as a commercial aircraft exempt from sales and use tax under section 1115(a)(21) of the Tax Law if the aircraft is used to transport an owner's tangible personal property in the conduct of its business, and the aircraft is used primarily in intrastate, interstate or foreign commerce. See section 1101(b)(17) of the Tax Law. It is clear that an aircraft used by its owner to transport its own cargo (e.g., raw materials, inventory, finished goods) from one place to another in intrastate, interstate, or foreign commerce qualifies for the exemption.

Section 528.9(a) of the Sales and Use Tax Regulations, while not strictly applicable to commercial aircraft, does provide insight into what is meant in section 1115(a)(21) of the Tax Law by the phrase "primarily engaged in intrastate, interstate or foreign commerce." In interpreting similar language for the purposes of the exemption for commercial vessels, section 528.9(a)(5) provides that "Interstate or foreign commerce means the transportation of persons or property between states or countries." This implies that intrastate commerce would similarly be construed as the transportation of persons or property between two or more points within New York State.

In the present case, Client will lease an aircraft for use in performing an aerial photography and imaging function for purposes of pipeline inspections. Aerial work activities such as aerial photography, aerial surveillance and aerial pipeline inspections are not considered the transportation of persons or property for hire for purposes of subparagraph (i) of section 1101(b)(17) of the Tax Law. Further, such activities are not the transportation of property between points within New York State or between states and countries in the conduct of Client's business. Webster's II New College Dictionary (1999) defines transport as follows: "To convey from one place to another." Client's use of the aircraft to perform its photography and imaging service, therefore, will not constitute the use of an aircraft primarily in the transportation of tangible personal property in the conduct of its business as contemplated by subparagraph (ii) of section 1101(b)(17). Accordingly, as used by Client, the subject aircraft will not qualify as a

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commercial aircraft pursuant to section 1101(b)(17) and Client's lease of such aircraft will not be exempt from sales and use tax under section 1115(a)(21) of the Tax Law.

DATED: June 27, 2006

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.