

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-91 (35)S  
Sales Tax  
April 25, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910208A

On February 8, 1991, a Petition for Advisory Opinion was received from Arepo Corporation, 1209 Orange Street, Wilmington, Delaware 19801.

The issue raised by Petitioner, Arepo Corporation, is whether the purchase of a non-commercial aircraft by a non-resident where the delivery of the aircraft is taken outside of New York State, but later hangered and maintained in New York State is subject to New York State and local sales and use tax.

Petitioner was incorporated in the State of Delaware on April 29, 1987. Its registered office is at 1209 Orange Street, Wilmington, Delaware. The Petitioner does not maintain, and has not at any time since its incorporation maintained, an office in New York State. The Petitioner does not have, nor has it at any time since its incorporation had, any employees. The sole shareholder of Petitioner is Diefco Inc., a company incorporated in the Republic of Panama on April 1, 1987. The voting rights of all of Petitioner's shares are, pursuant to a voting trust agreement entered into on May 6, 1987, held by Mercantile Safe Deposit and Trust Co., a Maryland banking corporation, as voting trustee. At all times since its incorporation the assets of Petitioner have consisted entirely of cash and the aircraft described below.

On May 13, 1987, Petitioner acquired a Gulfstream II aircraft ("Gulfstream II"). Title to, and possession of, Gulfstream II were transferred to Petitioner at Newcastle County Airport, Wilmington, Delaware. On June 13, 1988, Petitioner acquired a Gulfstream III aircraft ("Gulfstream III"). Title to, and possession of, Gulfstream III were transferred to Petitioner at Newcastle County Airport, Wilmington, Delaware.

On July 13, 1988, Petitioner sold Gulfstream II back to its original owner. Title to, and possession of, Gulfstream II were transferred by Petitioner at Newcastle County Airport, Wilmington, Delaware.

At all times while owned by Petitioner, Gulfstream II was, and Gulfstream III has been, maintained by Wayfarer Ketch Corporation ("Wayfarer Ketch") and hangered at the Westchester County Airport, White Plains, New York. Wayfarer Ketch is a corporation engaged in the business of servicing aircraft, and has been so engaged for over 30 years. Wayfarer Ketch is not related, directly or indirectly, to Petitioner, nor does it have any common shareholders or directors with Petitioner. The servicing and maintenance contract which Petitioner has entered into with Wayfarer Ketch is the standard contract which Wayfarer Ketch enters into with all of its clients, all of which are dealt with on an arm's-length basis.

Moreover, at all times while owned by Petitioner, Gulfstream II was, and Gulfstream III has been, used solely for the personal use of the beneficial owner of the shares of Diefco Inc. (the "Shareholder"). The Shareholder is neither a citizen nor a resident of the United States and is not a resident of New York State. The Shareholder is not engaged in any business in New York State and has no office in New York State.

Petitioner was established for the sole purpose of holding title to the subject aircraft for liability, registration and convenience reasons and in accordance with common industry practice. Petitioner was not established for profit-producing purposes and has never had any earnings, revenues or receipts from investments or operations. All cash requirements of the Petitioner have been met through contributions to Petitioner's capital by the Shareholder.

Section 525.2(a)(3) of the Sales Tax Regulations provides, in pertinent part, as follows:

"The sales tax is a 'destination tax', that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate."

Moreover, Section 1110 of the Tax Law which imposes a compensating use tax provides, in part, as follows:

"Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state. . . except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail. . . ."

Section 1101(b) of the Tax Law defines the term "use" to mean:

"[t]he exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time. . . ." (emphasis added)

In addition, Section 1118(2) of the Tax Law provides that the following uses of property shall not be subject to the compensating use tax:

"In respect to the use of property purchased by the user while a nonresident of this state, except in the case of tangible personal property which the user, in the performance of a contract, incorporates into real property located in the state. A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, shall not be deemed a nonresident with respect to the use in this state of property in such employment, trade, business or profession."

Moreover, 526.15(b)(1) of the Sales Tax Law defines a resident corporation as follows:

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"Any corporation incorporated under the laws of New York, and any corporation, association, partnership or other entity doing business in the State or maintaining a place of business in the State, or operating a hotel, place of amusement or social or athletic club in the State is a resident."

Accordingly, since title and possession of Gulfstream II and Gulfstream III were transferred to Petitioner outside of New York State such purchases are not subject to New York State and local sales tax pursuant to Section 525.2(a)(3) of the Sales Tax Regulations. Moreover, pursuant to Section 1118(2) of the Tax Law and Section 526.15(b)(1) of the Sales Tax Regulations since Petitioner is a non-resident corporation and is not maintaining a place of business or carrying on a business in New York State, such purchases are not subject to the use tax imposed pursuant to Sections 1110 and 1101(b) of the Tax Law.

DATED: April 25, 1991

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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