

ST 13-0072-GIL 11/13/2013 MISCELLANEOUS

The exemption for materials, parts, equipment, components, and furnishings incorporated into or upon an aircraft as part of the modification, refurbishment, completion, replacement, repair, or maintenance of the aircraft applies only to the sale of qualifying tangible personal property to persons who modify, refurbish, complete, repair, replace, or maintain aircraft and who (i) hold an Air Agency Certificate and are empowered to operate an approved repair station by the Federal Aviation Administration, (ii) have a Class IV Rating, and (iii) conduct operations in accordance with Part 145 of the Federal Aviation Regulations. See 86 Ill. Adm. Code 130.120(aaa). (This is a GIL.)

November 13, 2013

Dear Xxxxx:

This letter is in response to your letter dated May 16, 2013, in which you request 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.

In your letter you have stated and made inquiry as follows:

Please accept the following as a formal request for a Private Letter Ruling to be issued by the Department with respect to the below described facts. This issue is whether the ‘Class IV’ exemption (defined below) applies to all retail sales of aircraft spares in Illinois from COMPANY’s Illinois spares warehouse. The tax period at issue is DATE to present (on going exemption under existing law). The Department recently conceded in audit that the exemption does apply to COMPANY (audit period was DATE 1 to DATE 2). There is no litigation currently pending with respect to this issue or period.

ISSUE

Whether the Illinois ‘Class IV’ exemption, pursuant to ILCS 35§120/2-5(40), applies to COMPANY such that sales from its Chicago spares warehouse are exempt from Illinois Retailer’s [sic] Occupation Tax and related taxes.

AUDIT RESOLUTION

To the best of taxpayer's knowledge, the Department has not previously ruled, other than in audit, on the same or similar issue for the taxpayer or a predecessor, and such issue has never been submitted by taxpayer for formal ruling and subsequently withdrawn.

FACTS

1. COMPANY, a STATE 1 corporation, is a world leading manufacturer of business jets including aftermarket solutions and services. COMPANY has owned and operated a US based parts distribution business since the early 1960s, has its own customer base for COMPANY aircraft and aftermarket products, preferred relationships with its own suppliers and well-developed Authorized Services Facility (commonly referred to as 'ASF') network for its Lear products within the business aircraft industry;
2. COMPANY also has several US based service centers located in various states where customers are conveniently serviced as part of various programs, including warranty and other programs contracted between customers and COMPANY.
3. COMPANY is a retailer engaged in the business of selling tangible personal property at retail pursuant to ILCS 35§§120/2 and 105/2 and distributes aircraft spares throughout the world from its Chicago, Illinois warehouse and from various other worldwide locations;
4. COMPANY has gross receipts from the sale of such tangible personal property in Illinois pursuant to ILCS 35§120/2-5;
5. COMPANY holds an Air Agency Certificate and is empowered to (and does) operate its service center repair stations pursuant to approval by the Federal Aviation Administration (FAA);
6. COMPANY's service center/repair facility located in STATE 2 holds an FAA Class IV rating; and
7. COMPANY, as the IL retailer, is conducting operations in accordance with Part 145 of the Federal Aviation Regulations (FAR) pursuant [sic] ILCS 35§120/2-5(40).

LAW

ILCS 35§102-2 – Tax imposed, commonly referred to as the Retailers [sic] Occupation Tax, provides “*A tax is imposed upon persons engaged in the business of selling at retail tangible personal property*, including computer

software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for public commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any now known or hereafter developed.” [Emphasis added].

ILCS 35§105/2 Definitions provides that a “retailer” means and includes every person engaged in the business of making sales at retail as defined in this Section. A person who holds himself or herself out as being engaged (or who habitually engages) in selling tangible personal property at retail is a retailer hereunder with respect to such sales ‘...(and not primarily in a service occupation)...’. [Emphasis added].

ILCS 35§120/2-5 ‘Exemptions provides: ‘**Gross receipts from proceeds from the sale** of the following tangible personal property are exempt from the tax imposed by this Act:...” [Emphasis added].

ILCS 35§120/2-5(40) provides “Beginning January 1, 2010, materials, parts, equipment, components and furnishings incorporated into or upon an aircraft as part of the modification, refurbishment, completion, replacement, repair, or maintenance of the aircraft. This exemption includes consumable supplies used in the modification, refurbishment, completion, replacement, repair, and maintenance of aircraft, but excludes any materials, parts, equipment, components, and consumable supplies used in the modification, replacement, repair, and maintenance of aircraft engines or power plants, whether such engines or power plants are installed or uninstalled upon any such aircraft. ‘Consumable supplies’ include, but are not limited to, adhesive, tape, sandpaper, general purpose lubricants, cleaning solution, latex gloves, and protective films. **This exemption applies only to those organizations that** (i) hold an Air Agency Certificate and are empowered to operate an approved repair station by the Federal Aviation Administration, (ii) have a Class IV Rating, and (iii) conduct operations in accordance with Part 145 of the Federal Aviation Regulations. The exemption does not include aircraft operated by a commercial air carrier providing scheduled passenger air service pursuant to authority issued under Part 121 or Part 129 of the Federal Aviation Regulations.” [Emphasis added].

According to the above cited statutes, the following requirements must be met in order to qualify for the exemption provided in ILCS 35§120/2-5(40):

1. Person/Taxpayer must be engaged in the business of selling tangible personal property at retail (ILCS 35§§120/2 and 105/2);
2. Person/Taxpayer must have gross receipts from the sale of such tangible personal property ILCS 35§120/2-5);

3. Person/Taxpayer which is retailing must hold an Air Agency Certificate and be empowered to operate an approved repair station by the Federal Aviation Administration (FAA);
4. Person/Taxpayer which is retailing must have a Class IV rating; and
5. Person/Taxpayer which is retailing must conduct operations in accordance with Part 145 of the Federal Aviation Regulations (FAR) ILCS 35§120/25(40)).

ANALYSIS

ILCS 35§120/2-5(40) is an exemption to the Retailer's [sic] Occupation Tax, which is defined, COMPANY is a retailer for purposes of the statute in general as well as for the specific purpose of the exemption with respect to sales of "...materials, parts, equipment, components, and furnishings incorporated into or upon an aircraft as part of the modification, refurbishment, completion, replacement, repair or maintenance of the aircraft." Nowhere in the statute does it say that the retailer of the part has to hold the Class IV and conduct operations under Part 145 for the purpose of making repairs related to the sold parts. To the contrary, the definition of retailer provides the retailer "...not [be] primarily in a service occupation...". In order to read the statute to say that the exemption does not apply to the retailer but to the service provider, one must construe the statute to imply that the repair facility itself is in fact the retailer for purposes of this statute, for which there is no such requirement.

Further, Illinois statutes do not require that modification, refurbishment, completion, replacement, repair, or maintenance of the aircraft occur in Illinois, and further the statutes do not require the facility doing such work be located within the state of Illinois. No reference, in fact, is made at all with respect to the location of the repair facility.

COMPANY meets all the requirements outlined in the statutes and, therefore, per Illinois law qualifies for exemption on all sales of parts to be used in the repair of aircraft and sold in the state of Illinois.

1. COMPANY is a retailer engaged in the business of selling tangible personal property at retail pursuant to ILCS 35§§120/2 and 105/2;
2. COMPANY has gross receipts from the sale of such tangible personal property pursuant to ILCS 35§120/2-5;
3. COMPANY holds an Air Agency Certificate and be empowered to operate an approved repair station by the Federal Aviation Administration (FAA);

4. COMPANY as retailer, has a Class IV rating; and
5. COMPANY, as retailer, is conducting operations in accordance with Part 145 of the Federal Aviation Regulations (FAR) pursuant to ILCS 35§120/2-5(40).

The Department of Revenue audit team's previous position was two-fold: (1) ILCS 35§120/2-5(40) only applies to maintenance facilities located in Illinois, and (2) based on legislative intent, the exemption applies to the purchase of parts by such facility for repairs completed in Illinois. COMPANY does not agree with this position for the following reasons, as affirmed pursuant to the resolution on audit of this matter.

First, if in fact, the statute did require the facility to be located in Illinois, the statute providing for the exemption would be at risk of being struck down as unconstitutional. In *Russell Stewart Oil Company*¹, the Illinois Supreme Court ruled that the state failed to sustain its burden in justifying the discrimination against interstate commerce in terms of the claimed local benefits flowing from the statute, failed to show the unavailability of nondiscriminatory alternatives and therefore struck section 3 of the Use Tax Act which provided a new definition of "gasohol" providing an exemption to in state producers only as a violation of the commerce clause. Specifically, the Court found that "Discrimination based on geographic origin is a kind of activity that the commerce clause serves to prevent. See also *Bacchus Imports, Ltd. V Dias* (1984), 468 U.S. 263, 82 L.Ed. 200, 104 S.Ct. 3049."

In the facts of that case, plaintiff was an Illinois corporation which owned and operated a retail gas stations [sic] in Illinois, Iowa and Wisconsin, and sold "gasohol" which is a blend of nine parts gasoline, cellulosic materials or petroleum products. Effective 9/1/1985, section 2 of the Retailers' Occupation Tax Act and section 3 of the Use Tax Act were amended to set out new tax rates for the sale of gasohol produced from ethanol distilled in Illinois or in a State offering Illinois reciprocal tax benefits relating to gasohol. Both Acts were amended to provide "With respect to gasohol as defined in the Use Tax Act in which the ethanol had been distilled in Illinois, such tax shall be imposed at the rate of 0% up to and including December 31, 1983..." whereas prior to the amendment, all sales of gasohol were taxed at the same rate without regard to where the ethanol used to produce the gasohol was distilled.

With respect to such facts, the Illinois Supreme Court wrote "It is clear, however, that '[n]o State may, consistent with the Commerce Clause, 'impose a tax which discriminates against interstate commerce*****by providing a direct commercial advantage to local business.'" (*Boston Stock Exchange v. State Comm'm* (1977),

¹ *Russell Stewart Oil Company v Illinois* (1988), 124 Ill 2d. 116, 529 NE2d. 484.

429 U.S. 318, 329, 50 L.Ed.2d 514, 524, 97 S.Ct. 599,607, quoting *Northwestern States Portland Cement Co. v. Minnesota* (1959), 358 U.S. 450, 458, 3 L.Ed.2d 421, 427, 79 S.Ct. 357,362.) Where the purpose of State legislation affecting interstate commerce amounts to “simple economic protectionism,” a virtual *per se* rule of invalidity has been applied by the Court. (*Baachus Imports, Ltd*); *Minnesota v. Clover Managers, Inc.* (1980) 447, U.S. 27,36, 64 L.Ed2d 702,712, 100 S.Ct. 2009,2015; *Philadelphia v. New Jersey* (1978), 437 U.S. 617,624, 57 L.Ed.2d. 475,481, 98 S.Ct. 2351,2535.) Permitting individual States to enact laws favoring local businesses at the expense of out-of-State businesses would, in the language of the Court, “invite a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause.” *Dean Milk Co. v. Madison*, (1951), 340 U.S. 349,356, 95 IL.Ed.2d 329,334, 71 S.Ct. 295,299. See also *Maryland v. Louisiana* (1981), 451 U.S. 725,754, 68 L.Ed.2d. 576,600, 101S.Ct. 2114,2133; *Boston Stock Exchange v. State Tax Comm’n* (1977) 429 U.S. 318, 329, 50 L.Ed2d 514,525, 97 S.Ct. 599,607.’

Second, the statute itself is clear and not vague on its face, and as such legislative intent is presumed to be reflected². In *Exelon*, the Illinois Supreme Court stated “In construing a statute, it is never proper for a court to depart from plain language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent.”³

To the best of taxpayer’s knowledge, there is no authority, statutory or otherwise, directly on point or contrary to the taxpayer’s above stated position.

Your time and consideration of this matter is greatly appreciated. Please advise of your determination in writing to the person(s) and location indicated below.

DEPARTMENT’S RESPONSE:

The Department’s regulation “Public Information, Rulemaking and Organization” provides that “[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored.” 2 Ill. Adm. Code 1200.110(a)(4). The Department is declining to issue a private letter ruling in this instance and, instead, is issuing you this General Information Letter.

On August 16, 2013, Public Act 98-0534 was enacted which amended the exemption for materials, parts, equipment, components, and furnishings incorporated into or upon an aircraft as part of the modification, refurbishment, completion, replacement, repair, or maintenance of the

² *Exelon Corporation v. DOR*, 234 Ill 2d 266; 917 NE2d 899; 334 Ill Dec 824 (2009), where the Supreme Court of Illinois noted that a court’s analysis of a statute begins with the language of the statute, which is presumed to be the best indication of legislative intent and further, where statutory language is clear and unambiguous, a court must give it effect without resorting to other tools of interpretation.

³ *Id.*

aircraft provided for in the Use Tax Act, Service Occupation Tax Act, Service Use Tax Act and the Retailers' Occupation Tax Act. The exemption was amended, in relevant part, to provide that the exemption applies only to the sale of qualifying tangible personal property to persons who modify, refurbish, complete, repair, replace, or maintain aircraft and who (i) hold an Air Agency Certificate and are empowered to operate an approved repair station by the Federal Aviation Administration, (ii) have a Class IV Rating, and (iii) conduct operations in accordance with Part 145 of the Federal Aviation Regulations. The exemption does not include aircraft operated by a commercial air carrier providing scheduled passenger airservice pursuant to authority issued under Part 121 or Part 129 of the Federal Aviation Regulations.

If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess
Associate Counsel