STATE OF ARKANSAS
Department of Finance and Administration

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August 13, 2020

[redacted]
VIA EMAIL: [redacted]

Re: Legal Opinion 20200804
Sales and Use Tax- Aircraft

[redacted]:

This is in response to your email dated August 5, 2020, to Mr. Joel DiPippa, Senior Counsel with the Arkansas Department of Finance and Administration ("DFA"). Your email requested that DFA issue a legal opinion addressing various questions outlined in your email. Your opinion request has been assigned to me for response.

FACTS

The following facts were submitted for consideration as part of your opinion request:

> [redacted] has established an aviation maintenance facility in [redacted], Arkansas. [redacted] has been approached by an airline regarding whether certain transactions the airline contemplates with [redacted] would result in an Arkansas tax liability.
>
> The airline has leased several commercial aircraft from a leasing company. Both the airline and the leasing company are non-residents of Arkansas. The aircraft have not been based in Arkansas. As the leases terminate, the airline shall redeliver the aircraft (under their own power) to the leasing company at [redacted] facility. Once delivered, the airline is obligated to pay the leasing company certain termination payments called for in the lease agreement.
>
> The leasing company will enter into an agreement with [redacted] to temporarily park the aircraft in [redacted] and for [redacted] to perform required storage preservation requirements on the aircraft. The aircraft shall remain in [redacted] until the leasing company either sells or leases the aircraft to another party or the leasing company enters into an agreement with [redacted] to dismantle the commercial aircraft.

> The leasing company shall park the aircraft at the [redacted] facility until sold or leased to another party. Upon such sale, the aircraft will be based outside of Arkansas.
>
> If the aircraft are not leased or sold, the leasing company may elect to dismantle the commercial aircraft. Once the decision to dismantle the aircraft is made, the engines, which represent the majority of the value of the aircraft, are removed and are either sold to parties outside of Arkansas or leased to commercial aircraft operators based outside of Arkansas. The airframe is then inducted into a hangar of the maintenance facility where numerous aircraft components are removed, cleaned and tagged. The aircraft components are then refurbished or repaired and/or stored at the maintenance base until sold to third parties. Once all usable parts have been removed, the remaining shell is stored on the maintenance facility tarmac and eventually sold at a nominal value for reclamation of the scrap metal.

Your request presents the following questions for consideration:

1. Are the lease termination payments made by the airline to the leasing company subject to Arkansas sales or use tax?
2. Are the charges made by [redacted] to the airline for the removal from the aircraft of certain interior equipment belonging to the airline subject to Arkansas sales or use tax?
3. Are charges made by [redacted] to the airline to store equipment removed from the aircraft and belonging to the airline subject to Arkansas sales or use tax?
4. Is the storage of the aircraft in Arkansas by [redacted] for the leasing company while the leasing company decides how it wants to dispose of the aircraft subject to Arkansas sales or use tax?
5. Is the subsequent sale of aircraft by the leasing company to a third party subject to Arkansas sales or use tax when title to the aircraft will pass to the third party while the aircraft is located in Arkansas and the aircraft will be removed from Arkansas soon after the sale?
6. If the leasing company requests that [redacted] disassemble the aircraft so that the leasing company may sell the components to third parties, will the charge for disassembly or the sale of the components be subject to Arkansas sales or use tax where the components will be removed from Arkansas soon after the sale?
7. If the leasing company requests that [redacted] disassemble the aircraft and store the removed components in Arkansas until a buyer can be located, are the charges made by [redacted] to the leasing company for that storage subject to Arkansas sales or use tax?

LAW

Arkansas law provides that all sales of tangible property, including leases or rentals, are subject to sales tax. See Ark. Code Ann. §§ 26-52-301 and 26-52-505(a). Additionally, the sale of certain enumerated services, including the alteration, refinishing, cleaning, replacement, and repair of aircraft, is subject to sales tax. These general rules are followed unless the General Assembly has enacted a specific exemption.

Arkansas law contains several sales and use tax exemptions concerning aircraft, aircraft parts, and services to aircraft. Those exemptions include the following:

Ark. Code Ann. § 26-52-301(3)(B)(vi)

(vi)(*a*) The gross receipts tax levied in this section shall not apply to the service of alteration, addition, cleaning, refinishing, replacement, or repair of commercial jet aircraft, commercial jet aircraft components, or commercial jet aircraft subcomponents.

(*b*) "Commercial jet aircraft" means any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred pounds (12,500 lbs.).

Ark. Code Ann. § 26-52-401(28)

There is specifically exempted from the tax imposed by this chapter the following:

…

(28)(A) Parts or other tangible personal property incorporated into or that become a part of commercial jet aircraft components, or commercial jet aircraft subcomponents, and the services required to incorporate the parts or other tangible personal property or otherwise make the parts or other tangible personal property part of a commercial jet aircraft component or commercial jet aircraft subcomponent.

(B) As used in this subdivision (28), "commercial jet aircraft" means a commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of twelve thousand five hundred pounds (12,500 lbs.) or more;

Ark. Code Ann. § 26-52-451

(a) The gross receipts or gross proceeds derived from the sale of an aircraft within the state are exempt from the gross receipts tax levied under this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949. Section 26-53-101 et. seq., if the aircraft is sold by a:

(1) Person that is the resident of another state to a purchaser that:

(A) is a resident of another state; and

(B) will base the aircraft outside of the State of Arkansas; or

(2) Seller located in this state and the aircraft that is sold:

(A) has a certified maximum take-off weight of more than nine thousand five hundred pounds (9,500 lbs.); and

(B) Will be based outside of the State of Arkansas, notwithstanding the fact that possession of the aircraft may be taken in this state for the sole purpose of removing the aircraft from the state under its own power.

(3) As used in this subsection, "maximum take-off weight" means the maximum gross weight due to design or operational limitations at which an aircraft is permitted to take off.

(b) The fact that a purchaser takes possession of an aircraft in this state does not prevent the application of the exemption provided in this section if the purchaser takes possession of the aircraft for the sole purpose of:

(1) Removing the aircraft from this state under its own power; or

(2) Locating the aircraft at a maintenance facility in this state for the time period necessary to complete maintenance or modifications to the aircraft if the aircraft is removed from this state upon completion of the maintenance or modifications.

Ark. Code Ann. § 26-53-115

(a) The tax levied in this subchapter shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive, or railroad companies brought into the State of Arkansas solely and exclusively for:

(1) Refurbishing, conversion, or modification within this state and which is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this subchapter if the aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of the refurbishing, conversion, or modification; or

(2) Storage for use outside or inside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas.

(b) If any such property is subsequently initially used in the State of Arkansas, the tax levied by this subchapter shall be and become applicable to the property so used in Arkansas.

(c) The General Assembly determines that it was not the intent of this subchapter to impose the compensating tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment or to any tangible personal property owned or leased by aircraft, airmotive, or railroad companies as provided in § 26-53-106 and as classified by this section.

ANALYSIS

Applying the law outlined above to the facts and questions specifically presented in your opinion request, the following responses are provided:

<u>Question No. 1:</u> Are the lease termination payments made by the airline to the leasing company subject to Arkansas sales or use tax?

<u>Response No. 1:</u> No. The Arkansas sales tax is imposed on the sale of tangible personal property, including aircraft. The term "sale" includes a lease or rental. The facts presented in your request indicate that the termination payments are made by the airline to the leasing company at the end of the leasing agreement. To the extent those payments are related to the lease of the aircraft, those payments are for periods prior to the aircraft being delivered to Arkansas. As such, those payments are not made for the sale or lease of the aircraft in Arkansas and are not subject to Arkansas sales or use tax.

<u>Question No. 2:</u> Are the charges made by [redacted] to the airline for the removal from the aircraft of certain interior equipment belonging to the airline subject to Arkansas sales or use tax?

<u>Response No. 2:</u> No, assuming the aircraft is a commercial jet aircraft with a take-off weight of more than 12,500 pounds. The removal of interior equipment from an aircraft is an alteration to the aircraft and is subject to sales tax as a taxable service as provided in Ark. Code Ann. § 26-52-301 unless the tax exemption provided in Ark. Code Ann. § 26-52-301(3)(B)(vi) is applicable. That exemption provides that the service of altering a commercial jet aircraft is exempt from tax. The term "commercial jet aircraft" is defined to mean a commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than 12,500 pounds.

<u>Question No. 3:</u> Are charges made by [redacted] to the airline to store equipment removed from the aircraft and belonging to the airline subject to Arkansas sales or use tax?

<u>Response No. 3:</u> No. The storage of aircraft equipment belonging to the airline is exempted from Arkansas sales and use tax by Ark. Code Ann. § 26-53-115(a)(2). The equipment in question was brought into Arkansas to be removed from aircraft belonging to the leasing company and stored in Arkansas. Additionally, the storage of tangible personal property is not a taxable service under Ark. Code Ann. § 26-52-301. Accordingly, any charges by [redacted] to the airline to store its aircraft equipment in Arkansas would not be subject to tax.

<u>Question No. 4:</u> Is the storage of the aircraft in Arkansas by [redacted] for the leasing company while the leasing company decides how it wants to dispose of the aircraft subject to Arkansas sales or use tax?

<u>Response No. 4:</u> No. The charges made by [redacted] to store the aircraft in Arkansas are not subject to sales or use tax for the reasons expressed in Response No. 3 above.

Question No. 5: Is the subsequent sale of aircraft by the leasing company to a third party subject to Arkansas sales or use tax when title to the aircraft will pass to the third party while the aircraft is located in Arkansas and the aircraft will be removed from Arkansas soon after the sale?

Response No. 5: No, based on the facts provided and assuming the take-off weight of the aircraft exceeds 9,500 pounds and the aircraft will be based outside Arkansas. The sale of aircraft within this state is subject to Arkansas sales tax unless the exemption in Ark. Code Ann. § 26-52-451 applies. That exemption provides that, when the seller is not located in Arkansas and the aircraft is sold to a resident of another state, the sale of the aircraft will be exempt if the aircraft will be based outside Arkansas. If the seller is located in Arkansas, the sale will be exempt if the aircraft has a maximum take-off weight of more than 9,500 pounds and the aircraft will be based outside Arkansas. Your request indicates that the leasing company is located outside Arkansas. Accordingly, the sale of the aircraft will be exempt from tax if the purchaser resides outside Arkansas and the aircraft will be based outside Arkansas. Even if the seller is considered to be located in Arkansas because of the presence of the aircraft in this state, the exemption would apply if the aircraft sold has a maximum take-off weight of more than 9.500 pounds and the purchaser will base that aircraft outside Arkansas.

Question No. 6: If the leasing company requests that [redacted] disassemble the aircraft so that the leasing company may sell the components to third parties, will the charge for disassembly or the sale of the components be subject to Arkansas sales or use tax where the components will be removed from Arkansas soon after the sale?

Response No. 6: No, assuming the aircraft is a commercial jet aircraft with a take-off weight of more than 12,500 pounds. The charges [redacted] makes to the leasing company to disassemble the aircraft are taxable as an alteration to aircraft under Ark. Code Ann. § 26-52-301 unless the tax exemption provided in Ark. Code Ann. § 26-52-301(3)(B)(vi) applies. That exemption applies to services performed on a "commercial jet aircraft". The term "commercial jet aircraft" is defined in that section to mean a commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than 12,500 pounds. Accordingly, if the aircraft satisfies the maximum take-off limits, [redacted] charges to disassemble the aircraft will be exempt from tax.

The sale of the aircraft components in Arkansas are subject to Arkansas sales tax unless the items qualify for the exemption provided by Ark. Code Ann. § 26-52-401(28). That exemption applies to the sale of parts or other tangible personal property that are incorporated into or become a part of commercial jet aircraft components or sub-components. The term "commercial jet aircraft" is defined in the same manner as described in the preceding paragraph. Additionally, Arkansas sales tax will not be due if the parts are sold to customers located outside Arkansas and the items are delivered to the purchaser outside Arkansas.

<u>Question No. 7:</u> If the leasing company requests that [redacted] disassembles the aircraft and stores the removed components in Arkansas until a buyer can be located, are the charges made by [redacted] to the leasing company for that storage subject to Arkansas sales or use tax?

<u>Response No. 7:</u> No. The charges [redacted] makes to the leasing company to store the aircraft components in Arkansas are not subject to tax for the reasons expressed in Response No. 3 above.

This opinion is based upon my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any change in the facts or law could result in a different opinion. Please be advised that this opinion may only be binding upon DFA for three (3) years from the date of issuance. <u>See</u> Arkansas Gross Receipts Tax Rule GR-75.

Sincerely,

John Theis
Revenue Legal Counsel