



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

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November 17, 2020

[REDACTED]

*Via email at* [REDACTED]

RE: Gross Receipts Tax – Sale of Aircraft  
Opinion No. 20201026

Dear [REDACTED],

Your letter requesting a legal opinion regarding the application of Arkansas sales and use tax law to an aircraft sale transaction on behalf of [REDACTED] [“(Seller)”]<sup>1</sup> has been assigned to me for response. Your request specifically states:

The request relates to the sale of a [REDACTED] Maritime Surveillance Aircraft [(the “Aircraft”)] to [REDACTED] [“(Buyer)”], a [REDACTED] based wholesale aviation and aerospace company, for resale to the [REDACTED] (“[REDACTED]”). [Seller] is planning to close the initial sale of the Aircraft at the [REDACTED] facility [(the “[REDACTED] Facility”)] in November 2020.

[Seller and the [REDACTED] Facility] believe the sale of the Aircraft in Arkansas should be exempt from Arkansas Gross Receipts Tax based on both the Arkansas sale-for-resale exemption (Rule GR-52(B)(2)) and Arkansas’ expanded fly-away exemption (2017 Act 595; A.C.A. 26-52-451(a), (b)). As a matter of due diligence, the parties have determined that it is necessary to request a reliance opinion from DFA prior to closing based on various technical and business aspects of the transaction. Some of the reasons for requesting a reliance opinion for this sale include the following:

With respect to the sale-for-resale exemption, [Seller] understands the foreign wholesale purchaser does not hold a retail permit issued by any state in the US. Under these circumstances, Rule GR-53(B)(2) permits a seller to rely on: “a written

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<sup>1</sup> Seller is a foreign corporation that is neither organized under the laws of the state of Arkansas nor is headquartered in this State.

certification to the seller that the articles or services are purchased for resale.” Ark. Code § 26-52-401(12)(A) could be construed to apply more stringent requirements. For this reason, the parties desire a reliance opinion that the quoted provision of the Rule and a general certification from [Buyer] that the Aircraft is purchased for resale to the JCG will be sufficient for exemption in this case.

With respect to the fly-away exemption, the Additional Information included below explains several reasons the aircraft is expected to remain at the [redacted Facility] for a period of months following closing, before circumstances will permit: “removing the aircraft from the state under its own power[.]” Ark. Code § 26-52-451(b)(1). Although the fly-away exemption does not set out specific time limitations, the parties desire a reliance opinion that the fly-away exemption will apply under the unusual circumstances surrounding this transaction.

The “Additional Information” section in your letter provides the following facts regarding the unusual circumstances surrounding the sale of the Aircraft:

- Pursuant to a sales contract made in 2015 between Seller and Buyer, Seller agreed to sell to Buyer the Aircraft for Buyer to resell to [redacted].
- The Aircraft will be transferred to the [redacted] Facility in November 2020 following the completion of services being performed on the Aircraft in [redacted]. Following the transfer, Seller will close the sale and transfer of title of the Aircraft to Buyer.
- Following the sale of the Aircraft to Buyer, registration of the Aircraft will be accomplished using FAA owner trust services provided by a third party.<sup>2</sup> Under the owner trust structure, the third party will be the US registered owner for purposes of export while Buyer maintains operational control of the aircraft. Direct ownership will revert to Buyer following export.
- In addition to the registration requirements, it is possible that the Aircraft will remain at the [redacted] Facility for several months following closing due to the following factors:
  - An Operating and Ferry Agreement will be signed between the [redacted] Facility and Buyer that will provide for the [redacted] Facility to ferry the Aircraft to [redacted]. Due to COVID-19 restrictions US or [redacted] pilots are not able to transport the aircraft to [redacted] currently.
  - Upon the Aircraft’s arrival in [redacted], Buyer will subcontract additional specialized modification work on the Aircraft to a third party before final delivery to the ultimate end user [redacted]. There is a delay in the availability of a modification slot at the facility performing the work and scheduling at the facility may also be affected by COVID-19.
- The [redacted] Facility will maintain the Aircraft in “non-flying period condition” while it remains the US, which means it will be maintained in condition to take off for [redacted] on short notice.

Based upon the facts presented, you asked whether the sale of the Aircraft in Arkansas should be exempt from Arkansas Gross Receipts Tax based on either the sale-for resale exemption or the fly-away exemption.

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<sup>2</sup> You state in your letter that owner trusts are special purpose entities necessary to register aircraft under FAA regulations on behalf of foreign owners in order to transport aircraft out of the county. *See* U.S.C. § 44102 (regarding citizenship requirements for a U.S. registered aircraft); 47 C.F.R. § 61.3 (preventing pilots from operating an aircraft unless the registration requirements of U.S.C. § 4410 are met).

## RESPONSE.

Yes. As described more fully below, the sale of the Aircraft would be exempt from Arkansas Gross Receipts Tax under the sale-for-resale exemption provided in Ark. Code Ann. § 26-52-401(12)(A) and under the fly-away exemption provided in Ark. Code Ann. § 26-52-451.

### Applicable Law

The Arkansas Gross Receipts Tax (“sales tax”) applies to all sales of tangible personal property and certain enumerated services unless a specific exemption applies. Ark. Code Ann. § 26-52-301 (Supp. 2019). Arkansas Code Annotated § 26-52-401(12)(A) specifically provides an exemption from sales tax for:

Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state if the sales within the state are made to persons to whom receipts tax permits have been issued as provided in § 26-52-202.

The Department of Finance and Administration (“Department”) has promulgated Gross Receipts Tax Rule GR-53 to aid in the administration of the “sale-for-resale” exemption found in Ark. Code Ann. § 26-52-401(12)(A). Gross Receipts Tax Rule GR-53(B)(2) provides:

A purchaser may also claim the sale-for-resale exemption by providing information to the seller that otherwise establishes that the purchaser is reselling the articles purchased. Such information includes the purchaser’s retail permit number or a **written certification to the seller that the articles or services are purchased for resale.**

(emphasis added).

Additionally, Arkansas Code Annotated § 26-52-451 (Supp. 2019) provides a sales tax exemption for certain sales of aircraft as follows:

- (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, § 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.

## Analysis

The sale of the airplane as you described would be exempt from Arkansas sales tax under the sale-for-resale exemption provided in Ark. Code Ann. § 26-52-401(12)(A) and GR-53(B)(2). You stated in your request for an opinion that Buyer will resell the Aircraft to [REDACTED]. Although the Buyer is a foreign company that does not have a gross receipts tax permit issued to them by any state, GR-53(B)(2) permits the exemption if Buyer issues a written certification to Seller “that the articles or services are purchased for resale” and that establishes that certification in the absence of a permit. Accordingly, a general certification from Buyer that the Aircraft is purchased for resale to the [REDACTED] will be sufficient for exemption from sales tax in this case.

The sales transaction would also be exempt from tax under the fly-away exemption provided in Ark. Code Ann. § 26-52-451. The fly-away exemption applies to sales of aircraft when (1) the seller and the buyer of the aircraft are residents of another state and (2) the buyer will base the aircraft outside the State of Arkansas. *See* Ark. Code Ann. § 26-52-451(a).

While the term “resident” is not defined for Arkansas sales tax purposes, the Department previously addressed the meaning of that term for purposes of the tax exemption in Ark. Code Ann. § 26-52-451. The Department concluded that a legal entity organized under the laws of a state other than Arkansas and headquartered in a state other than Arkansas is a “person that is a resident of another state” for purposes of that exemption. In this case, both the Buyer and the Seller are foreign corporations, organized under foreign laws and headquartered on foreign soil. Therefore, Seller and Buyer are residents of another “state.”<sup>3</sup> Ark. Code Ann. § 26-52-451(a)(1)(A).

You state that the Aircraft will ultimately be based outside of Arkansas in [REDACTED], but the Additional Information provided in your letter make clear that the Aircraft may remain in Arkansas for several months before circumstances will permit the Buyer to remove the Aircraft from the State “under its own power.” Ark. Code Ann. § 26-52-451(b)(1). The storage of the Aircraft in Arkansas for a period prior to its removal from this state does not alter the availability of the exemption since the aircraft will ultimately be based outside the state. Accordingly, the fly-away exemption would apply to this transaction. *See* Ark. Code Ann. § 26-52-451(a)(1).

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<sup>3</sup> According to Merriam-Webster’s dictionary, a “state” is “a politically organized body of people usually occupying a definite territory.” Under this definition, a foreign corporation would be a resident of another “state.”

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules and regulations. Any change in the facts or law could result in a different opinion. You may rely on this opinion for three years pursuant to Ark. Gross Receipts Tax Rules GR-75(B).

Regards,

Caroline Calvert  
Revenue Legal Counsel