**Private Letter Ruling**

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| **Ruling Number:** | **P-2004-018** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Purchase of aircraft in the State of Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **05/14/2004** |

**Body:**

Office of Policy & Research

May 14, 2004

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Dear Mr. TTTTTT:

We wish to acknowledge receipt of your letter dated April 23, 2004, regarding the application of Kansas Retailers’ Sales tax. In this letter, you have stated that your firm represents TTTTTTTTT (“TTT”), with respect to the purchase of an aircraft in the state of Kansas.

You supplied the following information:

TTTTTTTTTTTTTTTT. (“TTT”) is a Delaware corporation having its principal place of business in TTTTTT, TTTT. TTT has entered into two Aircraft Purchase Agreements (the “Purchase Agreements”) with, and made down payments to, two separate but related aircraft manufacturers for the purchase of two different aircraft (the “Aircraft”). Each Aircraft will be manufactured in Wichita, Kansas, then flown to TTTTTTT, TTTTTT, for final finish out. Pursuant to similar or identical terms in each Purchase Agreement:

(1) Final payment of the purchase price for each Aircraft is due at the time of delivery of the Aircraft.

(2) Buyer will inspect and flight test each Aircraft in TTTTTT, TTT after each Seller completes the finish out.

(3) Following satisfactory flight testing and correction of any problems, each Seller, at Buyer’s expense, will provide a crew to fly each Aircraft to a location mutually agreed to by the parties for delivery.

(4) After each Aircraft arrives at the specified delivery location, Buyer will remit final payment, accept physical possession of the Aircraft, and sign a receipt for delivery. Also at that time, Seller will deliver to Buyer a bill of sale, title to the Aircraft will pass to Buyer, and risk of damage or loss will pass to Buyer.

For business reasons unrelated to this ruling request, TTT and its affiliates will engage in the following transactions:

(A) TTT will form two wholly owned, single member limited liability companies under Delaware law, “Newco 1” and “Newco 2.” Newco 1 and Newco 2 may engage in activities that constitute doing business in Texas. However, except as described herein, Newco 1 and Newco 2 will engage in no business activity in the State of Kansas.

(B) TTT will assign one Purchase Agreement to Newco 1 and the other Purchase Agreement to Newco 2. After the assignments, TTT will remain jointly and severally liable with Newco 1 and Newco 2 for the fulfillment of the buyer’s obligations under the Purchase Agreements such as payment to the seller of the sales price.

(C) For accounting and corporate law purposes, TTT will treat the down payments of the purchase price under each assigned Agreement as a contribution to the capital of Newco 1 and Newco 2.

(D) Neither Newco 1 nor Newco 2 will assume any indebtedness in connection with its acceptance of the assignment of an Agreement or its acceptance of the down payments as a contribution to capital.

(E) Newco 1 and Newco 2 will request the Sellers to deliver the Aircraft in Wichita, Kansas. The Aircraft purchases will be consummated in Wichita, Kansas in accordance with the terms of the Agreements outlined above, including the payment by Newco 1 and Newco 2 of the final installment due to the sellers under the contract. TTT may remit funds on behalf of Newco 1 and/or Newco 2 in satisfaction of their final payment obligations, but any such payment shall be made by TTT as agent for Newco 1 or Newco 2 and the parties’ books and records will reflect such payment as a capital contribution from TTT to Newco 1 and/or Newco 2.

(F) After delivery in Wichita, Kansas, the Aircraft will remain in Kansas for some period for pilot training and other activities necessary to place the Aircraft in service; provided, however, neither Aircraft shall remain in the state for more than 10 days following the sale and delivery of the Aircraft to Newco 1 and Newco 2 as described herein.

(G) After delivery of each Aircraft in Wichita, Kansas and before such Aircraft leave Kansas for any reason, each of Newco 1 and Newco 2 will liquidate. Each liquidation will result in the distribution of the Aircraft owned by the liquidating entity to TTT for no consideration.

(H) TTT will accept physical possession of each Aircraft in Wichita, Kansas as a result of the liquidations and will, prior to flying each Aircraft to the State of Texas, register each Aircraft with the Federal Aviation Administration. TTT will hangar the Aircraft in the State of Texas, and use the Aircraft for flights within and outside of the State of Texas. In any event, and as stated above, neither Aircraft will remain in the State of Kansas for more than 10 days following the sale and delivery of the Aircraft to Newco 1 and Newco 2 as described herein.

After reviewing the facts of the above referenced letter, the Kansas Department of Revenue is in agreement that the simultaneous sales and deliveries of the airplanes are exempt from Kansas retailers’ sales tax, if the following conditions occur. Each entity with the chain of ownership is a nonresident of Kansas and the airplanes are removed from the State of Kansas within ten days from the date of sale from Newco 1 and Newco 2 to TTTTTTTTTTTTT, TTT.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling.

If I may be of further assistance, please contact me at your earliest convenience at (785) 296-7776.

Sincerely yours,

Thomas P. Browne, Jr.
Tax Specialist

TPB

**Date Composed: 06/16/2004 Date Modified: 06/16/2004**