**Private Letter Ruling**

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| **Ruling Number:** | **P-2008-010** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Deicing service for aircraft of commercial air carriers.** |
| **Keywords:** |  |
| **Approval Date:** | **11/24/2008** |

**Body:**

Office of Policy & Research

November 24, 2008

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RE9,2008

Dear XXXX:

Thank you for your recent e-mail. You ask if the service of deicing aircraft for commercial air carriers is taxable or exempt from Kansas sales tax. Historically, air carriers have been entitled to the claim the same common-carrier exemptions as interstate trucking companies and interstate railroads.

The Kansas retailer sales tax act has exempted repair and replacement parts for rolling stock used by common carriers since the 1930's. When the Kansas sales tax act was expanded to tax repair, installation, and application services in the early 1970's, the exemption for repair and replacement parts remained in place. However, the exemption was not expanded to exempt the newly taxed labor services. As a result, charges for repair, installation, and application services provided to interstate common carriers are taxable in Kansas, but charges for the repair and replacement parts that are installed on their rolling stock are exempt. This distinction has been a source of confusion ever since labor services were first taxed.

This distinction also controls how Kansas sales and use taxes apply to interstate air carriers. Consequently, charges that are billed to interstate air carriers for deicing services are taxable as "application services," unless an exemption applies. *See K.S.A. 79-3603(p).* There are three areas of exemption that might exempt application services. The first is an exemption that the Kansas legislature enacted in 2006 for aircraft repair parts and services. The second is K.A.R. 92-20-17, which is a Kansas regulation for air carriers. The third discusses how other states have applied their sales tax laws and court decisions on sales taxation of interstate commerce to deicing services performed in their states.

The statutory changes that were made by the 2006 Kansas legislature were discussed Notice 04-06. It instruct:

**AMENDED NOTICE 04-06**
**SALE OF AIRCRAFT REPAIR PARTS AND SERVICES**

Beginning January 1, 2005, the sale of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of all aircraft, will be exempt from Kansas state and local sales and compensating use tax pursuant to 2004 Senate Bill 147.

However, sales of aircraft not being used as certified or licensed common carriers in interstate or foreign commerce, not sold to a foreign government, or not sold for use outside the United States will remain subject to Kansas state and local sales tax, unless the aircraft is sold and delivered in this state to a resident of another state, the aircraft is not to be registered or based in this state, and the aircraft does not remain in this state more than 10 days.

The following shows the language that the legislature struck from the earlier exemption statute and the new language that was added:

(g) sales of aircraft including remanufactured and modified aircraft~~, sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft~~ sold to persons using directly or through an authorized agent such aircraft ~~and aircraft repair, modification and replacement parts~~ as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft~~, aircraft parts, replacement parts and services employed in the remanufacture, modification and repair of aircraft~~ for use outside of the United States *and sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft*. . . . 2004 Kansas Session Laws 171.

The department has construed this provision as exempting charges to replace oil, lubricants, antifreeze, hydraulic fluid, and other similar fluids that an aircraft carries that allows the aircraft to operation. Also exempt are services to replace the oxygen and any other compressed gases that are carried on an aircraft, such as Halon and CO2, which are used to extinguish fires.

Deicing consists of spraying glycol or other deicing fluids on the exterior of an aircraft. This services allows aircraft to take off that otherwise would be grounded because dangerous amounts of ice had formed on the aircraft's wings and fuselage. This means that the deicing services are application services that are performed to the exterior of the aircraft rather than replacement services that involve the replacement of fluids or gases that are carried during flight and allow the aircraft's different components to operate in flight. Deicing, in many ways, is similar to washing interstate motor vehicles and trailers, which have been held to be taxable services in Kansas. Therefore, charges for deicing services that are billed an air carrier are not exempt under 2006 Senate Bill 147.

The second area to review is K.A.R. 92-20-17, which is the Kansas regulation that explains how sales and use tax law applies to commercial air carriers. It reads:

92-20-17 Airlines--interstate commerce. Any airlines engaged in the transportation by aircraft of persons or property in interstate common carrier transportation shall be deemed to be a "public utility" as used in section 79-3704 (a) of the act.
All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by such airline is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein.
All aircraft and flight equipment brought into the state for use in interstate transportation, including equipment to be installed in such aircraft, shall be exempt.
All repair parts and replacement materials or parts brought into and stored in the state of Kansas which become a part of the aircraft or flight equipment operating in interstate commerce are exempt.
"Aircraft" when used herein, means airplanes or any vehicle used for air navigation. "Flight equipment'' means any apparatus or accessories that are attached to or become a part of the aircraft. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

There is nothing in this regulation that can be read as exempting charges to an air carrier for the service of deicing their aircraft. Similarly, an air carrier's purchases of glycol for use by their employees to deice their aircraft appears to be taxable purchases of tangible personal property. The glycol does not constitute "parts" or "equipment" that are installed in an aircraft. Rather glycol is more like soap or other cleaners that an airline used to clean their aircraft. Purchases of these items are not exempt.

The third area that needs to be reviewed is how other states treat deicing services under their sales tax laws. In New York state, sales tax is not imposed on engine oil, grease, and other lubricants purchased by an air carrier for use in their aircraft. However, glycol and other deicing fluids sprayed on their aircraft for deicing purposes are not exempt in New York, since these products do not become part of the aircraft. Illinois also has ruled that glycol and other deicing fluids sprayed on an air carrier's aircraft cannot be purchased exempt from tax because these fluids do not become a part of the aircraft. In Illinois, the exemptions for air carriers does not exempt supplies that an airline purchases for use in conjunction with servicing their operations. While Texas does not tax deicing services, the Texas ruling is based on a statutory exemption for maintenance services provided to an air carrier's aircraft. Thus, deicing services provided to air carriers in Kansas are subject to Kansas sales tax since application services are taxable in Kansas and no exemption is available to air carriers that exempts their purchase of deicing services or deicing fluids.

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.

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**Date Composed: 12/05/2008 Date Modified: 12/05/2008**