



North Carolina Department of Revenue

Pat McCrory
GovernorLyons Gray
Secretary

May 10, 2013

Federal ID: [REDACTED]
Account ID: [REDACTED]

[REDACTED]

Attention: [REDACTED]
Sales and Property Tax Administrator

Re: Private Letter Ruling

Dear Mr. [REDACTED]

We have your letter dated June 9, 2010 in which you requested a private letter ruling as to the applicability of North Carolina sales and use tax to an aircraft lease transaction between your firm ("Lessor") and [REDACTED] Corporation ("Lessee"). Your firm requested a determination as to whether North Carolina would view the transaction as a lease contract with an option to purchase or a conditional sales contract. Please accept our apology for the delay in responding to your request.

You advise "[REDACTED] was the original owner of the aircraft and [was] refinancing (through a 'sale-leaseback' transaction) through [REDACTED] under a 'lease' contract." We reviewed the Aircraft Lease Agreement ("Agreement") provided and noted the following details included in the Agreement:

- Risk of the property during the term of lease is that of the Lessee.
- Lessee is to maintain, restore, or replace the property if damaged during the term of the lease.
- Lessee is to pay the taxes and insurance on the property during the term of the lease.
- Upon the expiration of the lease, Lessee "shall have the following options:
 - i. purchase all, but not less than all, of the Equipment as provided in Subsection 26(b) of the Agreement.
 - ii. return all, but not less than all, of the Equipment pursuant to Subsection 26(c) of the Agreement"

G.S. 105-164.3 (17) provides in part, that a lease or rental is "[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term lease or rental does not include any of the following:

- a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
- b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments. . . ."

G.S. 105-164.4(a)(2) provides that "[t]he applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property."

G.S. 105-164.4(a)(1b) provides that the rate of three percent (3%) applies to the sales price of each aircraft. . . at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.

Pursuant to G.S. 105-164.3 17, 105-164.4(a)(2) and 105-164.4(1b) the Agreement is a lease with an option to purchase. Therefore, tax is due at a rate of 3% on the gross receipts derived from the lease of the aircraft up to a maximum of \$1,500.00. Additionally, in the event the Lessee purchases the aircraft at the expiration of the lease term from your firm, the sale transaction is a separate transaction and the rate of 3% would apply to the sales price of the aircraft with a maximum tax of \$1,500 on the separate transaction.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: [REDACTED], Director of Sales and Use Tax Division
[REDACTED] Assistant Director of Sales and Use Tax Division