**Private Letter Ruling**

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| **Ruling Number:** | **P-2009-007** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of aviation- related parts, equipment and services by an aviation management consulting business.** |
| **Keywords:** |  |
| **Approval Date:** | **09/04/2009** |

**Body:**

Office of Policy & Research

September 4, 2009

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XXXX

RE: Your letter dated May 4, 2009

Dear XXXX:

I have been asked to answer your recent letter. You submitted the letter on behalf of XXXX, an aviation-management consulting business. XXXX offers a broad range of aviation-related services including aircraft management, aircraft evaluation, consulting, and professional-pilot services. It also sells airplane parts and aviation equipment. You list a number of items and ask if their sale is exempt under K.S.A. 2008 Supp.79-3606(g).

K.S.A. 2008 Supp. 79-3606(g) was last amended by the 2004 Kansas legislature. The statutory changes enacted in 2004 were discussed Notice 04-06. It instructs:

**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 subsection of the applicable Kansas session law shows the changes that the 2004 legislature made to the previous exemption:

(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.

As the notice explains, K.S.A. 2008 Supp. 79-3606(g) continues to exempt sales of aircraft to airlines and other common carriers that use the aircraft to haul passengers and freight in interstate commerce. The subsection's treatment of parts and services was changed. K.S.A. 2008 Supp. 79-3606(g) now exempts "sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft." This language exempts sales of aircraft parts that are sold and used to: (1) repair an aircraft: (2) replace existing parts of an aircraft, or (3) modify an aircraft. The services done to repair or modify an aircraft, or to replace parts on an aircraft, are also exempt. Since 2005, the exemption of aircraft parts and services has extended to all aircraft, not just aircraft that are used by common carriers in interstate or foreign commerce, or that are sold to foreign governments.

The use of the words "aircraft repair, modification and replacement parts," shows that K.S.A. 2008 Supp. 79-3606(g) is intended to extend to items that are affixed to an aircraft and that, by being affixed, are incorporated into and become a permanent part of the aircraft or at least a "permanent" part for the part's service life. Examples of these parts are engines, engine components, doors, windshields, windows, hydraulic components, passenger seats, landing gear, controls and non-removable instruments that are permanently mounted in the cockpit, similar parts that are replaced, repaired, or overhauled according to manufacturer service bulletins, and other similar life-limited parts. Exempt parts do not include disposable items or items that are attached to the aircraft during servicing or flight but removed once the servicing or flight is complete.

K.S.A. 2008 Supp. 79-3606(g) does not extend to goods like blankets, pillows, carts, or serving utensils that are purchased for use on an aircraft or to equipment that is not affixed to the aircraft with any permanency and that can be easily removed for use on another aircraft. Examples of these items are headsets, aviation calculators, electronic-flight bags, and flight maps. Other items that are not exempt under K.S.A. 2008 Supp. 79-3606(g) include baggage hauling and loading equipment, refueling equipment, tractors that are used to move aircraft prior to takeoff, or to other ground equipment that is used at an airport to move or service private or commercial aircraft. *Complete Auto Transit, Inc. v. Brady, 430 U.S. (1977);* *see e.g. In re Taylor Crane & Rigging, Inc. 22 Kan. App. 2nd 27, 913 P.2d 204 (1995).*Repair and maintenance tools, equipment, and disposable items used to service or repair aircrafts are also not exempt under this provision. None of these things become a "part" of the aircraft.

For common and private carriers, the exemption extends to items that Federal Aviation Regulations (FARs) require the carrier to secure in an aircraft with the expectation that the item will remain secured there throughout the item's service life or until it is used. These thing can include life rafts, life preservers, and other ditching equipment required to be secured in an aircraft under FARs 23.1415, 91-509, 121.1415, etc., fire extinguishers, and similar items. Sales of personal breathing units and emergency vision assurance systems that are required by FARs to be secured in aircraft so that they are available for emergency use in the air by the flight crew are also be exempt. Sales of oxygen equipment required by FARs for ground crews are not exempt. Items that are secured in an aircraft pursuant to FARs with the expectation that the item will remain in the aircraft throughout the items service life are typically purchased on the account of a common carrier or private carrier to use to equip their aircraft. The exemption does not extend to disposable items or to single-use items such as stencils that are affixed to an aircraft and then removed after use.

With these things in mind, I will identify the items in your list that are not exempt under K.S.A. 2008 Supp. 79-3606(g), assuming your limited description of the items and their intended use is accurate. Taxable items are: electronic-flight bags, aircraft chocks, tow bars, step cover protectors, engine covers, wing protection matting, and ICOM air-band transceivers. Sales of items such as engine covers and wing matting, that are used when an aircraft is being serviced or stored, are not exempt even if its use is required by an FAR during the servicing or storage or the aircraft. These items are not attached or secured to the aircraft with the intention that the item remains with the aircraft beyond the servicing being performed or storage period. Sun visors, which you describe as being ". . . installed on the aircraft to protect a pilot from sun glare and heat" are exempt because they are affixed to the aircraft. Headsets sold to pilots, commercial carriers, and private carriers are taxable. Headsets can be easily removed from one aircraft and used in a different aircraft.

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.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 09/15/2009 Date Modified: 09/15/2009**