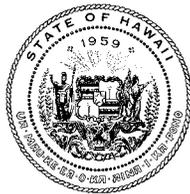


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LETTER RULING NO. 2010-01

[REDACTED TEXT]
[REDACTED TEXT]
[REDACTED TEXT]
[REDACTED TEXT]

January 22, 2010

**RE: [REDACTED TEXT] RULING RELATING TO THE IMPORTATION OF A
SPARE PART JET ENGINE**

Dear [REDACTED TEXT]:

This letter responds to your [REDACTED TEXT], request for a ruling on behalf of your client, [REDACTED TEXT] (hereinafter the "Company"), relating to the importation of a jet engine for use as a part in its fleet of [REDACTED TEXT] aircraft, as further discussed below.

ISSUE PRESENTED

Whether the Company's purchase and subsequent importation into the State of a jet engine for use as a spare part in the repair and maintenance of its fleet of [REDACTED TEXT] jet aircraft is exempt from the use tax under Chapter 238, Hawaii Revised Statutes (HRS).

BRIEF ANSWER

Based upon the analysis below, the Company's purchase and subsequent importation into the State of a jet engine for use as a spare part in the repair and maintenance of its fleet of [REDACTED TEXT] jet aircraft is not subject to the use tax under Chapter 238, HRS.

STATEMENT OF FACTS

The Company, headquartered at [REDACTED TEXT], with FEIN number [REDACTED TEXT] and GET number [REDACTED TEXT], is a commercial airline with a fleet of aircraft for use both within and without the State of Hawaii. The Company reports for net income and general excise tax on a calendar year, accrual basis.

The Company is engaged in the business of air transport [REDACTED TEXT]. The

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Company's aircraft fly to [REDACTED TEXT] destinations such as [REDACTED TEXT]. [REDACTED TEXT] destinations include [REDACTED TEXT]. The Company's [REDACTED TEXT] routes are referred to herein as "[REDACTED TEXT] flights."

The Company owns and operates an aircraft service and maintenance facility comprising an area of more than [REDACTED TEXT] square feet located at [REDACTED TEXT]. The Company's jet aircraft fly to [REDACTED TEXT] destinations for scheduled "commercial use" as defined in Chapter 263, HRS (relating to aeronautics), and the aircraft operate with two or more jet engines.

In 2010, the Company will be purchasing a \$[REDACTED TEXT] jet engine.¹ The primary purpose of the Company's importation of this engine, as well as its intended use once imported, will be as a spare part for the Company's fleet of aircraft. The Company uses spare jet engines as follows: (1) affixing the engines to the Company's aircraft that fly [REDACTED TEXT] flights; or (2) removing them from the Company's aircraft and repairing them in the Company's aircraft maintenance facility at the [REDACTED TEXT] or sending them to repair facilities outside of Hawaii; or (3) kept as a spare part in the [REDACTED TEXT] aircraft maintenance facility or elsewhere outside of Hawaii pending use for the Company's aircraft. If shipped outside of Hawaii for repair, the engines are thereafter sent to [REDACTED TEXT] or [REDACTED TEXT] for storage or for affixation to the Company's aircraft. The jet engine at issue, when purchased, will be used for the same purposes that spare jet engines are currently used by the Company.

ANALYSIS

Section 238-1, HRS, paragraph (8) under the definition of "use," provides an exemption from the use tax by defining the term "use" to exclude "the use of material, parts, or tools imported or purchased by a person licensed under chapter 237 which are used for aircraft service and maintenance...as those terms are defined in section 237-24.9." HRS § 238-1(8) (emphasis added).

Section 237-24.9, HRS, defines the following terms relevant to the application of the use tax exemption above:

"Aircraft" is defined as "any craft...of whatever description engaged in intrastate, interstate, or international scheduled commercial use as defined in chapter 263, that operates with two or more jet engines." HRS § 237-24.9(b).

"Aircraft service and maintenance" is defined as "all scheduled and unscheduled tasks performed within an aircraft service and maintenance facility for the inspection, modification, maintenance, and repair of aircraft and related components including engines....." *Id.* (emphasis

¹ The Company also purchased two aircraft jet engines in [REDACTED TEXT] that were previously under lease for use as spare parts as discussed in this letter. After the purchase, these two engines will continue to be used as spare parts in the same manner as the \$[REDACTED TEXT] jet engine. The analysis and conclusion in this ruling with respect to the \$[REDACTED TEXT] million jet engine apply equally to these two jet engines; provided that the facts relative to the [REDACTED TEXT] jet engines are the same as the \$[REDACTED TEXT] million jet engine.

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added).

"Aircraft service and maintenance facility" is defined as "a facility for aircraft service and maintenance that is not less than thirty thousand square feet...." *Id.*

"Maintenance" is defined as "the upkeep of aircraft engines, hydraulic and electrical systems, and all other components which are an integral part of an aircraft...." *Id.* (emphasis added).

In order to qualify for the use tax exemption provided for the purchase and importation of aircraft material, parts, or tools which are used for aircraft service and maintenance, the person licensed under Chapter 237, HRS, must: (1) be engaged in commercial aircraft use under chapter 263, HRS; (2) be importing the property for use in aircraft service and maintenance, which includes the upkeep, modification, maintenance, and repair of aircraft engines; and (3) such service and maintenance occurs at a qualified aircraft service and maintenance facility.

Based upon the facts as disclosed by the Company, the Company's purchase and importation of a jet engine for use as a spare part in the servicing and maintaining of its commercial aircraft flying [REDACTED TEXT] routes is exempt from the use tax under Chapter 238, HRS, because such importation does not constitute "use" within the meaning of HRS § 238-1(8).

The Company is importing the jet engine for its aircraft, which are commercial aircraft under Chapter 263, HRS.

The Company is purchasing and importing the jet engine as a spare part in connection with the repair and maintenance of its commercial aircraft fleet. The Company represents that the character of importation of this particular jet engine is, in fact, that of a spare. The jet engine will be utilized as a part in connection with the modification, maintenance, and repair of aircraft and that the engine is a related and integral component of the aircraft. The jet engine will be affixed to the Company's aircraft from time to time as a substitute part (*i.e.*, a spare), when necessary while another engine is repaired. The jet engine will also be removed from time to time for its own repair and maintenance. When not in use, the engine will be kept as a spare part for further use in continued repair and maintenance of its aircraft fleet. The jet engine, as described in this letter—with its primary purpose of importation being that of a spare part in furtherance of aircraft or aircraft engine upkeep—constitutes a "part" within the meaning of HRS § 238-1(8).

The jet engine, while in Hawaii, will be affixed, repaired, or maintained, at the Company's [REDACTED TEXT] aircraft repair and maintenance facility. When not in service, the jet engine will be stored at the Company's [REDACTED TEXT] aircraft repair and maintenance facility or elsewhere outside of Hawaii. As represented by the Company, the Company's aircraft repair and maintenance facility at [REDACTED TEXT] is of sufficient size such that it qualifies for the general excise and use tax exemptions provided by law.

Based upon the foregoing, the Company's importation of the spare jet engine as a part, and as further discussed herein, is excluded from the term "use" for purposes of the use tax.

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[REDACTED TEXT]

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As expressly provided in the exemptions for aircraft service and maintenance, there is no exemption from the general excise tax or use tax under those provisions for the refueling, janitorial services or cleaning, restocking of aircraft or passenger supplies, or loading or unloading of cargo and passenger baggage.

CONCLUSION

Based solely on the facts disclosed in this letter, the Company's purchase and importation of an aircraft jet engine for use as a spare part in connection with the service and maintenance of its fleet of aircraft is not considered a "use" within the meaning of HRS § 238-1(8).

This ruling is applicable only to the Company and shall not be applied retroactively, except as otherwise provided herein. It may not be used or cited as precedent by any other taxpayer. The conclusions reached in this letter are based on our understanding of the facts that the Company has represented. If it is later determined that our understanding of these facts is not correct, the facts are incomplete, or the facts later change in any material respect, the conclusion in this letter will be modified accordingly. This ruling also may be subject to change due to future amendments to laws, rules, or official Department positions.

The Company has reviewed and agreed that the redacted version of this ruling attached as Exhibit A will be available for public inspection and copying.

If you have any further questions regarding this matter, please call me at 808-587-1569. Additional information on Hawaii's taxes is available at the Department's website at <http://www.hawaii.gov/tax>.

Very truly yours,

JOSEPH B. TICHY
Administrative Rules Specialist