**Opinion Letter**

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| **Letter Number:** | **O-2003-006** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Manufacture and sale of mid-size business aircraft.** |
| **Keywords:** |  |
| **Approval Date:** | **10/28/2003** |

**Body:**

Office of Policy & Research

October 28, 2003

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XXXX

Re: Your letter dated June 10, 2003

Dear XXXX:

This responds to your letter received in June. Your letter presents a scenario involving XXXX's manufacture and sale of an mid-size business aircraft. Two "sales" transactions are involved. One involves the aircraft when it is "green." An aircraft is "green" when it has received its certificate of airworthiness and is capable of flight, but has an incomplete interior and an unpainted exterior. Under the terms of the contract of sale, title and risk of loss pass to the customer at the time of the green delivery. This is when title to the green aircraft passes to the customer.

Under the contract, XXXX retains possession of the green aircraft in order to complete the additional interior and exterior work. This work is done in Wichita and Wabash, Indiana. Following the completion of the interior and exterior work, the completed aircraft is delivered to the buyer who accepts the aircraft and removes it from Kansas within 10 days of acceptance. The aircraft buyer is a bona fide resident of a state other than Kansas and will not register or base the aircraft in Kansas.

You ask if the 10-day period extended in K.S.A. 79-3606(k) is measured from the date when title to the "green" aircraft passes, or from the date the buyer takes delivery of the completed aircraft. Please be advised that the 10-day period begins to run when the buyer takes delivery of the completed aircraft --- not when title to the green airplane passes.

For purposes of K.S.A. 79-3606(k), the 10-day period begins when the buyer takes delivery of the aircraft in the completed, final delivery condition. For purposes of this advice, completed, final delivery condition means the aircraft is completed to the customer’s final specifications and can be used for the customer’s intended purpose. This advice assumes that when title to the green aircraft passes, the only use being made of the aircraft in Kansas is its transportation to the location where the additional completion work will be done and completion of that work. It also assumes that the aircraft will be removed from Kansas within 10 days of the final acceptance by the purchaser.

While XXXX intends to performs the additional interior and exterior work in this case, this type of work is often performed by third-parties. For purposes of K.S.A. 79-3606(k), (now found at 2003 HB 2005, Sec. 7(k)), both the primary aircraft manufacturer and the third-party completion company may accept a properly completed and executed Kansas 10-day fly away exemption certificate from the buyer as long as both parties, in good faith, believe the aircraft will leave Kansas within 10 days of delivery to the buyer in its completed, final finished form. This includes the belief that the airplane will not be returned to Kansas to be hangared or otherwise be based here. When two separate companies are involved, the primary manufacturer can substantiate and support the exemption certificate was taken in good faith by obtaining a corroborating statement from the buyer at the time title is transferred to the green aircraft, indicating the aircraft will leave Kansas within 10 days of when the buyer takes possession of the aircraft in its final finished form.

I hope that this adequately explains application of K.S.A. 79-3606(k) to this business practice. If you need to discuss this matter further, please call me at 785-296-3081.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 10/28/2003 Date Modified: 10/28/2003**