

Out of State Pilot Training Not Taxable

The Bohannon Law Firm recently scored a strong aviation taxation victory at the Connecticut Supreme Court in the decision *Key Air, Inc. v. Commissioner of Revenue Services*, issued December 1, 2009, when the Court unanimously agreed with the firm's interpretation of an important statutory provision relating to the application of sales and use tax to certain aircraft-related business management consulting services.

The plaintiff, a certified air carrier, contracted with owners of private cabin jet aircraft to operate, maintain and charter the aircraft for commercial operation under an air carrier certificate issued by the Federal Aviation Administration. All of the aircraft managed by the plaintiff had certificated take-off weights in excess of six thousand pounds. As part of its services, the plaintiff provided trained pilots to operate its customers' aircraft and paid out-of-state vendors to provide flight training to these pilots as required by federal regulations, and billed its customers for the pilot training fees.

The defendant commissioner of revenue services determined that the plaintiff had failed to pay, pursuant to the Sales and Use Taxes Act (C.G.S. § 12-406 et seq.), taxes associated with its purchase of the pilot training services from the out-of-state vendors. In doing so, the defendant determined that the services did not fall within the tax exclusion provided in § 12-407 (a) (37) (J) (iii), which excludes business management consulting services "when such services are rendered in connection with an aircraft leased or owned by a certificated air carrier or in connection with an aircraft which has a maximum certificated take-off weight of six thousand pounds or more." The defendant took the position that the services were "used and consumed" by the plaintiff, and, therefore, that they were not rendered in connection with the operation of the qualifying aircraft. The plaintiff challenged the deficiency assessment, which was upheld by the defendant.

Thereafter, the plaintiff appealed from the deficiency assessment to the Superior Court, contending that the statute defining taxable business management services excluded the pilot training services from the definition of taxable business management services and, therefore, the plaintiff's purchase of those services for its customers was not taxable under the act. The trial court rendered judgment for the plaintiff, concluding that the pilot training services were excluded from the definition of taxable services, and further noted that the operative phrase "in connection with" contained in § 12-407 (a) (37) (J) (iii) had a broad meaning that simply required a causal relationship between the services and the qualified aircraft.

On the defendant's appeal, the Supreme Court held that the trial court properly concluded that the plaintiff's purchase of the pilot training services came within the scope of the exclusion contained in § 12-407 (a) (37) (J) (iii) because such services were rendered in connection with the plaintiff's provision of qualified pilots for its clients' aircraft. The Supreme Court confirmed that the phrase "in connection with" contained in § 12-407 (a) (37) (J) (iii) denotes only a causal relationship between the services rendered and the statutorily identified aircraft, and the plaintiff's compliance with the job related pilot

training service requirements pursuant to federal regulations was both necessary in order to retain qualified pilots to operate the owners' aircraft and integral to the relationship between the plaintiff and its client aircraft owners. Moreover, the Court noted that the defendant could not prevail on its claim that § 12-407 (a) (37) (J) (iii) provided a tax exemption that must be narrowly construed against the plaintiff, as that statute did not involve the application of a tax exemption but, rather, defined what business management services were taxable in the first instance.

Further questions in regard to this matter may be directed to Bohannon Law Firm attorneys David M. Bohannon and David C. Grigsby who successfully represented the plaintiff-appellee in this case.

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