

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-11(13)S
Sales Tax
May 3, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100913A

Petitioner [REDACTED] inquires whether an aircraft he purchased in 2008 for business purposes was exempt from sales and use tax under Tax Law section 1115(z)(1). Because the aircraft was not directly and predominantly used in the designated Empire Zone, Petitioner's purchase and use of the aircraft is subject to New York sales and use tax.

Facts

On January 28, 2003, the Tax Department issued a Qualified Empire Zone Enterprise (QEZE) sales tax certification to Petitioner. The certificate was valid for all current and future business locations of the Petitioner that are located in empire zones in which such business enterprise was certified to receive benefits under Article 18-B of the General Municipal Law (GML). The certificate states that Petitioner could make tax exempt purchases as a QEZE effective February 1, 2003.

Petitioner maintains an office in an empire zone in which his business has been certified to receive benefits under Article 18-B of the GML. In 2008 Petitioner purchased an aircraft. The aircraft was not hangared in an Empire Zone. Petitioner uses the aircraft to travel on business to locations outside the Empire Zone in which his business is qualified.

Analysis

During 2008, section 1115(z) of the Tax Law exempted from sales and use taxes the sale of tangible personal property to a QEZE, provided that the property was directly and predominantly used or consumed by the enterprise in an area designated as an Empire Zone pursuant to Article 18-B of the GML with respect to which the enterprise is certified pursuant to GML Article 18-B.

Petitioner's aircraft was used neither directly nor predominantly within an Empire Zone with respect to which the Petitioner was certified pursuant to Article 18-B. The adverb "directly" qualifying the word "used" connotes activity. *Cf.* 20 NYCRR §528.13(c)(1)(ii). Thus, the mere storage of tangible personal property in an Empire Zone would not constitute use directly in the zone. Accordingly, the aircraft would not be used directly in an Empire Zone if it were merely hangared in the zone.

The adverb "predominantly" qualifying the word "used" is both a temporal and physical limitation on the eligible use of tangible personal property. At least 50% of the use of the tangible personal property must occur within the Empire Zone in order for the property to qualify for the exemption. *Cf.* 20NYCRR §528.13(c)(3). Property integral to a business located in an Empire Zone is not necessarily used predominantly in the zone. The property must be physically used in the zone to satisfy the predominant requirement. Petitioner did not in fact use the aircraft in the zone. The use of the aircraft to support business activity in the zone is irrelevant.

