

Sales/Use/Indirect:

Washington: Aircraft Purchased and then Leased to Affiliate Qualifies for Resale Exemption

Determination No. 21-0020, Wash. Dept. of Rev. (5/7/24). A ruling issued by the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that a limited liability company (LLC) entered into a “true lease” of an aircraft within the meaning of WAC 458-20-211 (“Rule 211”), even though it was wholly owned by the chief executive officer (CEO) and minority shareholder of the company leasing the aircraft, and the CEO was allowed personal use of the aircraft as part of his compensation – thus permitting the LLC to claim Washington’s resale exemption on the purchased aircraft. In meeting Rule 211’s four requirements for a “true lease” under the provided facts, the Division explained that the LLC (*i.e.*, the “lessor”) leased property to the lessee for consideration because the lease was for a set term; provided the lessee with operational control of the aircraft without the lessee gaining any equity therein; required the lessee to make regular rent payments; and the lessee had no option to purchase the aircraft. Under the facts, the lessee took possession of the aircraft and exercised dominion and control over it for the term of the lease by scheduling flights, hiring pilots, and maintaining the aircraft, and the parties intended that the aircraft would revert to the lessor at the conclusion of the lease because such reversion was a negotiated term of the lease. Moreover, neither the lessor nor its employees or agents maintained dominion and control over the aircraft or operated it, because the lessee always governed travel, and the lessor’s owner lacked control of the lessee. Please contact us with any questions.

URL: <https://dor.wa.gov/sites/default/files/2024-05/43WTD013.pdf>

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