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## LOUISIANA INTER-STATE COMMERCE EXCLUSION SURVIVES ANOTHER ATTACK

By

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Since 1948, La. R.S. 47:305(E) (formerly La. R.S. 47:305(5)) has provided an exclusion from Louisiana sales/use tax for “bona fide interstate commerce.” The statute, which was enacted during a period when states essentially were prohibited from imposing sales/use taxes on “bona fide interstate commerce,” has survived numerous judicial and legislative attacks. In *Word of Life Christian Center v. West*, Docket No. 2003 CA 1399 (La. App. 1<sup>st</sup> Cir. 05/14/04), the exclusion once again survived an attack by a local taxing jurisdiction.

The taxpayer, Word of Life Christian Center, purchased two aircraft for transportation to and from various religious functions both in and out of Louisiana. Both planes were purchased and physically received out of state. The planes apparently were flown in and out of the taxing jurisdiction (Ascension Parish, Louisiana). According to the facts, the taxpayer presented flight logs for each of the two aircraft showing that “... both planes were used more than 90% in interstate commerce.”

Because the planes were purchased outside Louisiana, no Louisiana state or local sales taxes were due. Ascension Parish, however, sought to impose a local use tax on the two airplanes arguing that the aircraft had been imported into the parish and used there. The taxpayer, relying on La. R.S. 47:305(E), did not pay any Ascension Parish use tax on the two aircraft because they were used in “bona fide interstate commerce.”

In both *Shaw Group, Inc. v. Kennedy*, 767 So.2d 937 (La. App. 1<sup>st</sup> Cir. 2000), and *Tigator, Inc. v. West Baton Rouge Police Jury*, 657 So.2d 221 (La. App. 1<sup>st</sup> Cir. 1995), writ denied, 663 So.2d 712 (La. 1995), the Louisiana First Circuit Court of Appeal held that no state or local use tax was due on items of tangible personal property that were imported into the state or parish for ultimate use in interstate commerce. In both cases, the court held that if an item of tangible personal property ultimately is used in interstate commerce, it has not come to rest and become a part of the mass of property in Louisiana and, accordingly, is not subject to either state or local use tax.

Citing *Shaw Group* and *Tigator*, the Louisiana First Circuit Court of Appeal in *Word of Life Christian Center* held that the two aircraft were not subject to Ascension Parish use tax because they were used in interstate commerce and there was no “taxable moment” in Louisiana. The aircraft ultimately were used 90% in interstate commerce and therefore had not come to rest or become part of the mass of property in Louisiana. Consequently, no Louisiana state or local use tax was due on the aircraft.

As in the *Shaw Group* case, which also involved two aircraft that were used more than 99% in interstate commerce, the law now seems to be clear that neither the state nor a parish can impose a use tax on aircraft that may be stored in the state or parish, as the case may be, provided that the ultimate use of the aircraft is in interstate commerce (or at least 90% or more of the time in interstate commerce). Thus, as long as an aircraft is purchased

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outside Louisiana and used substantially in bona fide interstate commerce, no Louisiana state or local use tax will be due even if the aircraft is located in Louisiana when it is not operating in interstate commerce. In order to sustain this position, it is crucial that the taxpayer maintain precise flight logs to document the use of the aircraft.

There was one dissent in the *Word of Life Christian Center* case. Judge Gaidry noted that it was time to re-examine the basis of the relevant holdings in *Tigator* and *Shaw Group*. He commented that the "ultimate use" test should have no application to the situation at issue in the case and that the two aircraft came to rest in Louisiana. His comments obviously are contrary to existing case law and the consistent application of the exclusion in La. R.S. 47:305(E).

Having been unsuccessful on several occasions in challenging the application of La. R.S. 47:305(E), taxing authorities have attempted to have the exclusion either amended completely out of the law or severely restricted. These efforts have failed indicating that the legislature believes that the so-called "interstate commerce exclusion" is good tax policy in Louisiana.

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*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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