

Amendment No. 161

Senate Amendment to Senate Bill No. 93 (BDR 32-291)

Proposed by: Senate Committee on Revenue and Economic Development

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MSN/BJE



Date: 3/27/2015

S.B. No. 93—Authorizes certain businesses to apply to the Office of Economic Development for a partial abatement from certain taxes.
(BDR 32-291)



SENATE BILL NO. 93—COMMITTEE ON REVENUE
AND ECONOMIC DEVELOPMENT

(ON BEHALF OF THE OFFICE OF ECONOMIC DEVELOPMENT)

PREFILED DECEMBER 20, 2014

Referred to Committee on Revenue and
Economic Development

SUMMARY—Authorizes certain businesses to apply to the Office of Economic Development for a partial abatement from certain taxes. (BDR 32-291)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; authorizing certain qualified businesses in this State that own, operate, manufacture, service, maintain, test, repair, overhaul or assemble an aircraft or any component of an aircraft to apply to the Office of Economic Development for a partial abatement from certain property or sales and use taxes; revising the provisions governing the administration of the sales and use taxes to change the manner in which the taxes are required to be paid on tangible personal property purchased in the performance of certain contracts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the assessment of ad valorem taxes on certain real and personal property and the assessment of certain taxes on the gross receipts from the sale, storage, use or other consumption of certain personal property. (Chapters 361 and 374 of NRS) **Section 1** of this bill authorizes an owner of a qualified business or a person who intends to locate or expand a qualified business in this State to apply to the Office of Economic Development for a partial abatement of certain personal property or sales and use taxes. **Section 1** requires the Office of Economic Development to approve a partial abatement for a period of not more than 20 years for certain qualified new and existing businesses that own, operate, manufacture, service, maintain, test, repair, overhaul or assemble an aircraft or any component of an aircraft.

Sections 4 and 5 of this bill revise provisions governing the administration of the sales and use taxes (chapters 372 and 374 of NRS) to provide that a business, rather than a customer of such a business, is required to pay the sales or use tax on any tangible personal property purchased in the performance of a contract for the ownership, operation, manufacture, servicing, maintenance, testing, repair, overhaul or assembly of an aircraft or any component of an aircraft. For any such business which has been granted a partial abatement from sales and use taxes pursuant to **section 1**, the sales or use tax imposed on the

business, other than the taxes imposed pursuant to the Sales and Use Tax Act would then be abated.

Existing law exempts from certain sales and use taxes the gross receipts from the sale of aircraft and major components of aircraft to an air carrier that maintains its central office and bases a majority of its aircraft in Nevada. (NRS 372.317) A related provision governs the administration of the exemption. (NRS 372.726) In 1997, the Nevada Supreme Court held that the exemption was unconstitutional because it discriminated against interstate commerce. (*Worldcorp v. State, Dep't of Taxation*, 113 Nev. 1032 (1997)) **Section 12** of this bill repeals both provisions.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 360 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An owner of a business or a person who intends to locate or expand a business in this State may apply to the Office of Economic Development pursuant to this section for a partial abatement of one or more of:

(a) The personal property taxes imposed on an aircraft and the personal property used to own, operate, manufacture, service, maintain, test, repair, overhaul or assemble an aircraft or any component of an aircraft; and

(b) The local sales and use taxes imposed on the purchase of tangible personal property used to operate, manufacture, service, maintain, test, repair, overhaul or assemble an aircraft or any component of an aircraft.

2. Notwithstanding the provisions of any law to the contrary and except as otherwise provided in subsections 3 and 4, the Office of Economic Development shall approve an application for a partial abatement if the Office makes the following determinations:

(a) The applicant has executed an agreement with the Office which:

(1) Complies with the requirements of NRS 360.755; ~~and~~

(2) States the date on which the abatement becomes effective, as agreed to by the applicant and the Office, which must not be earlier than the date on which the Office received the application;

(3) States that the business will, after the date on which a certificate of eligibility for the partial abatement is issued pursuant to subsection 5, continue in operation in this State for a period specified by the Office, which must be not less than 5 years, and will continue to meet the eligibility requirements set forth in this subsection; and

(4) Binds the successors in interest of the applicant for the specified period;

(b) The business is registered pursuant to the laws of this State or the applicant commits to obtaining a valid business license and all other permits required by the county, city or town in which the business operates;

(c) The business owns, operates, manufactures, services, maintains, tests, repairs, overhauls or assembles an aircraft or any component of an aircraft;

(d) If the business is:

(1) A new business, that it will have five or more full-time employees on the payroll of the business within 1 year after receiving its certificate of eligibility for a partial abatement; or

(2) An existing business, that it will increase its number of full-time employees on the payroll of the business in this State by 3 percent or three

employees, whichever is greater, within 1 year after receiving its certificate of eligibility for a partial abatement; and

(e) The business meets at least one of the following requirements:

(1) The business will make a new capital investment of at least \$250,000 in this State within 1 year after receiving its certificate of eligibility for a partial abatement.

(2) The business will maintain and possess in this State tangible personal property having a value of not less than \$5,000,000 during the period of partial abatement.

(3) The average hourly wage that will be paid by the business to its employees in this State during the period of partial abatement is not less than 100 percent of the average statewide hourly wage as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year.

(4) The business develops, refines or owns a patent or other intellectual property, or has been issued a type certificate by the Federal Aviation Administration pursuant to 14 C.F.R. Part 21.

3. The Office of Economic Development:

(a) Shall approve or deny an application submitted pursuant to this section and notify the applicant of its decision not later than 45 days after receiving the application.

(b) Must not:

(1) Consider an application for a partial abatement unless the Office has requested a letter of acknowledgment of the request for the partial abatement from any affected county, school district, city or town and has complied with the requirements of NRS 360.757; or

(2) Approve a partial abatement for any applicant for a period of more than 20 years.

4. The Office of Economic Development must not approve a partial abatement of personal property taxes for a business whose physical property is collectively valued and centrally assessed pursuant to NRS 361.320 and 361.3205 unless the business is regulated under 14 C.F.R. Part 125 or 135.

5. If the Office of Economic Development approves an application for a partial abatement pursuant to this section, the Office shall immediately forward a certificate of eligibility for the partial abatement to:

(a) The Department;

(b) The Nevada Tax Commission; and

(c) If the partial abatement is from personal property taxes, the appropriate county treasurer.

6. An applicant for a partial abatement pursuant to this section or an existing business whose partial abatement is in effect shall, upon the request of the Executive Director of the Office of Economic Development, furnish the Executive Director with copies of all records necessary to verify that the applicant meets the requirements of subsection 2.

7. If a business whose partial abatement has been approved pursuant to this section and whose partial abatement is in effect ceases:

(a) To meet the requirements set forth in subsection 2; or

(b) Operation before the time specified in the agreement described in paragraph (a) of subsection 2,

the business shall repay to the Department or, if the partial abatement was from personal property taxes, to the appropriate county treasurer, the amount of the partial abatement that was allowed pursuant to this section before the failure of the business to comply unless the Nevada Tax Commission determines that the

business has substantially complied with the requirements of this section. Except as otherwise provided in NRS 360.232 and 360.320, the business shall, in addition to the amount of the partial abatement required to be repaid pursuant to this subsection, pay interest on the amount due at the rate most recently established pursuant to NRS 99.040 for each month, or portion thereof, from the last day of the month following the period for which the payment would have been made had the partial abatement not been approved until the date of payment of the tax.

8. The Office of Economic Development may adopt such regulations as the Office determines to be necessary to carry out the provisions of this section.

9. The Nevada Tax Commission may adopt such regulations as the Commission determines are necessary to carry out the provisions of this section.

10. An applicant for a partial abatement who is aggrieved by a final decision of the Office of Economic Development may petition a court of competent jurisdiction to review the decision in the manner provided in chapter 233B of NRS.

11. If the Office of Economic Development approves an application for a partial abatement of local sales and use taxes pursuant to this section, the Department shall issue to the business a document certifying the partial abatement which can be presented to retailers and customers of the business at the time of sale. The document must clearly state that the purchaser is only required to pay sales and use taxes imposed in this State at the rate of 2 percent.

12. As used in this section:

(a) "Aircraft" means any fixed-wing, rotary-wing or unmanned aerial vehicle.

(b) "Component of an aircraft" means any:

(1) Element that makes up the physical structure of an aircraft, or is affixed thereto;

(2) Mechanical, electrical or other system of an aircraft, including, without limitation, any component thereof; and

(3) Raw material or processed material, part, machinery, tool, chemical, gas or equipment used to operate, manufacture, service, maintain, test, repair, overhaul or assemble an aircraft or component of an aircraft.

(c) "Full-time employee" means a person who is in a permanent position of employment and works an average of 30 hours per week during the applicable period set forth in subparagraph (3) of paragraph (a) of subsection 2.

(d) "Local sales and use taxes" means any taxes imposed on the gross receipts of any retailer from the sale of tangible personal property sold at retail, or stored, used or otherwise consumed, in any political subdivision of this State, except the taxes imposed by the Sales and Use Tax Act.

~~(((d)))~~ (e) "Personal property taxes" means any taxes levied on personal property by the State or a local government pursuant to chapter 361 of NRS.

Sec. 2. NRS 360.755 is hereby amended to read as follows:

360.755 1. If the Office of Economic Development approves an application by a business for an abatement of taxes pursuant to NRS 360.950 or a partial abatement pursuant to NRS 360.750 or 360.752, **or section 1 of this act**, the agreement with the Office must provide that the business:

(a) Agrees to allow the Department to conduct audits of the business to determine whether the business is in full compliance with the requirements for the abatement or partial abatement; and

(b) Consents to the disclosure of the audit reports in the manner set forth in this section.

2. If the Department conducts an audit of the business to determine whether the business is in full compliance with the requirements for the abatement or partial abatement, the Department shall, upon request, provide the audit report to the Office of Economic Development.

3. Until the business has exhausted all appeals to the Department and the Nevada Tax Commission relating to the audit, the information contained in the audit report provided to the Office of Economic Development:

(a) Is confidential proprietary information of the business;

(b) Is not a public record; and

(c) Must not be disclosed to any person who is not an officer or employee of the Office of Economic Development unless the business consents to the disclosure.

4. After the business has exhausted all appeals to the Department and the Nevada Tax Commission relating to the audit:

(a) The audit report provided to the Office of Economic Development is a public record; and

(b) Upon request by any person, the Executive Director of the Office of Economic Development shall disclose the audit report to the person who made the request, except for any information in the audit report that is protected from disclosure pursuant to subsection 5.

5. Before the Executive Director of the Office of Economic Development discloses the audit report to the public, the business may submit a request to the Executive Director to protect from disclosure any information in the audit report which, under generally accepted business practices, would be considered a trade secret or other confidential proprietary information of the business. After consulting with the business, the Executive Director shall determine whether to protect the information from disclosure. The decision of the Executive Director is final and is not subject to judicial review. If the Executive Director determines to protect the information from disclosure, the protected information:

(a) Is confidential proprietary information of the business;

(b) Is not a public record;

(c) Must be redacted by the Executive Director from any audit report that is disclosed to the public; and

(d) Must not be disclosed to any person who is not an officer or employee of the Office of Economic Development unless the business consents to the disclosure.

Sec. 3. NRS 360.757 is hereby amended to read as follows:

360.757 1. The Office of Economic Development shall not take any action on an application for any abatement of taxes pursuant to NRS 274.310, 274.320, 274.330 or 360.750 *or section 1 of this act* or any other specific statute unless the Office:

(a) Takes that action at a public meeting conducted for that purpose; and

(b) At least 30 days before the meeting, provides notice of the application to:

(1) The governing body of the county, the board of trustees of the school district and the governing body of the city or town, if any, in which the pertinent business is or will be located;

(2) The governing body of any other political subdivision that could be affected by the abatement; and

(3) The general public.

2. The notice required by this section must set forth the date, time and location of the meeting at which the Office of Economic Development will consider the application.

3. The Office of Economic Development shall adopt regulations relating to the notice required by this section.

1 **Sec. 4.** Chapter 372 of NRS is hereby amended by adding thereto a new
2 section to read as follows:

3 1. *In administering the provisions of this chapter:*

4 (a) *The Department shall calculate the amount of tax imposed on tangible*
5 *personal property purchased for use in owning, operating, manufacturing,*
6 *servicing, maintaining, testing, repairing, overhauling or assembling an aircraft*
7 *or any component of an aircraft as follows:*

8 (1) *If the tangible personal property is purchased by a business for use in*
9 *the performance of a contract, the business is deemed the consumer of the*
10 *tangible personal property and the sales tax must be paid by the business on the*
11 *sales price of the tangible personal property to the business.*

12 (2) *If the tangible personal property is purchased by a business for use in*
13 *the performance of a contract and the sales tax is not paid because the vendor did*
14 *not have a valid seller's permit, or because the resale certificate was properly*
15 *presented, or for any other reason, the use tax must be imposed based on the*
16 *sales price of the tangible personal property to the business.*

17 (b) *Any tangible personal property purchased by a business for use in the*
18 *performance of a contract is deemed to have been purchased for use in owning,*
19 *operating, manufacturing, servicing, maintaining, testing, repairing, overhauling*
20 *or assembling an aircraft or any component of an aircraft.*

21 2. *As used in this section:*

22 (a) *"Aircraft" has the meaning ascribed to it in paragraph (a) of subsection*
23 *12 of section 1 of this act.*

24 (b) *"Component of an aircraft" has the meaning ascribed to it in paragraph*
25 *(b) of subsection 12 of section 1 of this act.*

26 (c) *"Contract" means any contract for the ownership, operation,*
27 *manufacture, service, maintenance, testing, repair, overhaul or assembly of an*
28 *aircraft or any component of an aircraft entered into by a business.*

29 **Sec. 5.** Chapter 374 of NRS is hereby amended by adding thereto a new
30 section to read as follows:

31 1. *In administering the provisions of this chapter:*

32 (a) *The Department shall calculate the amount of tax imposed on tangible*
33 *personal property purchased for use in owning, operating, manufacturing,*
34 *servicing, maintaining, testing, repairing, overhauling or assembling an aircraft*
35 *or any component of an aircraft as follows:*

36 (1) *If the tangible personal property is purchased by a business for use in*
37 *the performance of a contract, the business is deemed the consumer of the*
38 *tangible personal property and the sales tax must be paid by the business on the*
39 *sales price of the tangible personal property to the business.*

40 (2) *If the tangible personal property is purchased by a business for use in*
41 *the performance of a contract and the sales tax is not paid because the vendor did*
42 *not have a valid seller's permit, or because the resale certificate was properly*
43 *presented, or for any other reason, the use tax must be imposed based on the*
44 *sales price of the tangible personal property to the business.*

45 (b) *Any tangible personal property purchased by a business for use in the*
46 *performance of a contract is deemed to have been purchased for use in owning,*
47 *operating, manufacturing, servicing, maintaining, testing, repairing, overhauling*
48 *or assembling an aircraft or any component of an aircraft.*

49 2. *As used in this section:*

50 (a) *"Aircraft" has the meaning ascribed to it in paragraph (a) of subsection*
51 *12 of section 1 of this act.*

52 (b) *"Component of an aircraft" has the meaning ascribed to it in paragraph*
53 *(b) of subsection 12 of section 1 of this act.*

1 (c) *“Contract” means any contract for the ownership, operation,*
2 *manufacture, service, maintenance, testing, repair, overhaul or assembly of an*
3 *aircraft or any component of an aircraft entered into by a business.*

4 **Sec. 6.** NRS 218D.355 is hereby amended to read as follows:

5 218D.355 1. Except as otherwise provided in NRS 360.965 **H and section**
6 **1 of this act**, any state legislation enacted on or after July 1, 2012, which authorizes
7 or requires the Office of Economic Development to approve any abatement of taxes
8 or increases the amount of any abatement of taxes which the Office is authorized or
9 required to approve:

10 (a) Expires by limitation 10 years after the effective date of that legislation.

11 (b) Does not apply to:

12 (1) Any taxes imposed pursuant to NRS 374.110 or 374.190; or

13 (2) Any entity that receives:

14 (I) Any funding from a governmental entity, other than any private
15 activity bonds as defined in 26 U.S.C. § 141; or

16 (II) Any real or personal property from a governmental entity at no
17 cost or at a reduced cost.

18 (c) Requires each recipient of the abatement to submit to the Department of
19 Taxation, on or before the last day of each even-numbered year, a report on whether
20 the recipient is in compliance with the terms of the abatement. The Department of
21 Taxation shall establish a form for the report and may adopt such regulations as it
22 determines to be appropriate to carry out this paragraph. The report must include,
23 without limitation:

24 (1) The date the recipient commenced operation in this State;

25 (2) The number of employees actually employed by the recipient and the
26 average hourly wage of those employees;

27 (3) An accounting of any fees paid by the recipient to the State and to local
28 governmental entities;

29 (4) An accounting of the property taxes paid by the recipient and the
30 amount of those taxes that would have been due if not for the abatement;

31 (5) An accounting of the sales and use taxes paid by the recipient and the
32 amount of those taxes that would have been due if not for the abatement;

33 (6) An accounting of the total capital investment made in connection with
34 the project to which the abatement applies; and

35 (7) An accounting of the total investment in personal property made in
36 connection with the project to which the abatement applies.

37 2. On or before January 15 of each odd-numbered year, the Department of
38 Taxation shall:

39 (a) Based upon the information submitted to the Department of Taxation
40 pursuant to paragraph (c) of subsection 1, prepare a written report of its findings
41 regarding whether the costs of the abatement exceed the benefits of the abatement;
42 and

43 (b) Submit the report to the Director for transmittal to the Legislature.

44 **Sec. 7.** NRS 231.0685 is hereby amended to read as follows:

45 231.0685 The Office shall, on or before January 15 of each odd-numbered
46 year, prepare and submit to the Director of the Legislative Counsel Bureau for
47 transmission to the Legislature a report concerning the abatements from taxation
48 that the Office approved pursuant to NRS 274.310, 274.320, 274.330, 360.750 or
49 360.752 **H or section 1 of this act**. The report must set forth, for each abatement
50 from taxation that the Office approved during the fiscal years which are 3 fiscal
51 years and 6 fiscal years immediately preceding the submission of the report:

52 1. The dollar amount of the abatement;

53 2. The location of the business for which the abatement was approved;

3. The value of infrastructure included as an incentive for the business;
4. If applicable, the number of employees that the business for which the abatement was approved employs or will employ;

5. Whether the business for which the abatement was approved is a new business or an existing business;

6. The economic sector in which the business operates, the number of primary jobs related to the business, the average wage paid to employees of the business and the assessed values of personal property and real property of the business; and

7. Any other information that the Office determines to be useful.

Sec. 8. NRS 231A.170 is hereby amended to read as follows:

231A.170 1. For the purpose of NRS 231A.110, a qualified active low-income community business is limited to those businesses meeting the Small Business Administration size eligibility standards established in 13 C.F.R. §§ 121.101 to 201, inclusive, at the time the qualified low-income community investment is made. A business must be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the Small Business Administration size standards, throughout the entire period of the investment or loan.

2. Except as otherwise provided in this subsection, the businesses limited by this section do not include any business that derives or projects to derive 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business:

(a) Does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and

(b) Is the primary tenant of the real estate leased from the first business.

3. The following businesses are not qualified active low-income community businesses:

(a) A business that has received an abatement from taxation pursuant to NRS 274.310, 274.320, 274.330 or 360.750 ~~or~~ *or section 1 of this act.*

(b) An entity that has liability for insurance premium tax on a premium tax report filed pursuant to NRS 680B.030.

(c) A business engaged in banking or lending.

(d) A massage parlor.

(e) A bath house.

(f) A tanning salon.

(g) A country club.

(h) A business operating under a nonrestricted license for gaming issued pursuant to NRS 463.170.

(i) A liquor store.

(j) A golf course.

Sec. 9. NRS 353.207 is hereby amended to read as follows:

353.207 1. The Chief shall:

(a) Require the Office of Economic Development and the Office of Energy each periodically to conduct an analysis of the relative costs and benefits of each incentive for economic development previously approved by the respective office and in effect during the immediately preceding 2 fiscal years, including, without limitation, any abatement of taxes approved by the Office of Economic Development pursuant to NRS 274.310, 274.320, 274.330, 360.750, 360.752, 360.950, 361.0687, 374.357 or 701A.210, *or section 1 of this act*, to assist the

Governor and the Legislature in determining whether the economic benefits of the incentive have accomplished the purposes of the statute pursuant to which the incentive was approved and warrant additional incentives of that kind;

(b) Require each office to report in writing to the Chief the results of the analysis conducted by the office pursuant to paragraph (a); and

(c) Establish a schedule for performing and reporting the results of the analysis required by paragraph (a) which ensures that the results of the analysis reported by each office are included in the proposed budget prepared pursuant to NRS 353.205, as required by that section.

2. Each report prepared for the Chief pursuant to this section is a public record and is open to inspection pursuant to the provisions of NRS 239.010.

Sec. 10. The provisions of NRS 218D.380 do not apply to the reporting requirements of NRS 231.0685, as amended by section 7 of this act.

Sec. 11. The Legislature hereby finds that each exemption provided by this act from any ad valorem tax on personal property or excise tax on the sale, storage, use or other consumption of tangible personal property sold at retail:

1. Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

2. Will not impair adversely the ability of the State or any local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

Sec. 12. NRS 372.317 and 372.726 are hereby repealed.

Sec. 13. This act becomes effective upon passage and approval and expires by limitation on June 30, 2035.

TEXT OF REPEALED SECTIONS

372.317 Aircraft and major components of aircraft. There are exempted from the taxes imposed by this chapter the gross receipts from the sale of aircraft and major components of aircraft, such as engines and other components made for use only in aircraft, to an air carrier which:

1. Holds a certificate to engage in air transportation issued pursuant to 49 U.S.C. § 1371 and is not solely a charter air carrier or a supplemental air carrier as described in Title 49 of the United States Code; and

2. Maintains its central office in Nevada and bases a majority of its aircraft in Nevada.

372.726 Application of exemption for aircraft and major components of aircraft. On and after July 1, 1995, in administering the provisions of section 61.5 of chapter 397, Statutes of Nevada 1955, which is included in NRS as NRS 372.317, the Department shall:

1. Not enforce any restriction on the applicability of the exemption provided therein which would violate the United States Constitution.

2. Apply the exemption to all types of sales to air carriers including both indirect sales to an entity which purchases the aircraft or major components of an aircraft for lease to and use by an air carrier that otherwise qualifies for the exemption and direct sales to air carriers.