

# NATA Air Charter Summit

## STATE TAXES

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# State Taxes

- Why is there so much confusion surrounding State Taxes
  1. Lack of uniformity among the states
  2. Exposure to taxes in multiple states,
  3. Taxes can be significant
  4. Every year there is activity within the legislatures to change, raise, modify these taxes
  5. Misconceptions about how the taxes apply
  6. Bad information
- In addition, states are paying a lot of attention to business aircraft.



# State Taxes

- Multiple State Taxes imposed on aircraft
  - Aircraft Registration Fees
    - A fee that is imposed on the registration of an aircraft within a state
  - Personal Property, Ad Valorem Taxes,
    - A tax on tangible personal property that is located in a particular state, either based or part time
  - Taxes by another name,
    - License Taxes, Operating fees, Excise Taxes Etc.
  - Fuel Taxes, and



# State Taxes – Sales Tax

- Sales Taxes
  - Sales Tax is imposed at the time of the “sale” of an aircraft
  - Sales Tax would be due in the state in which the “sale” of the aircraft occurred.
  - Brokers, Dealers, aircraft manufacturers and others engaged in the selling of aircraft usually only worry about the Sales Tax.



# State Taxes – Sales Tax

- These entities will look for Sales Tax friendly states where they can deliver the aircraft without having to collect the sales tax. A Sales Tax friendly state would be one that either does not have or imposed a sales tax on aircraft, such as,
  - OR, AK, NH, MT
- Or there is an exemption such as a flyaway.
  - Flyway – you can take delivery in the state and as long as the aircraft is removed within “X” time, the tax is not due in that state.



# State Taxes – Sales Tax

- Sales and Use Taxes
  - Sales Tax is imposed at the time of the “sale” of an aircraft
  - Sales Tax would be due in the state in which the “sale” of the aircraft occurred.
  - Brokers, Dealers, aircraft manufacturers and others engaged in the selling of aircraft usually only worry about the Sales Tax.



# State Taxes – Sales Tax

- Easy to avoid the Sales Tax
  - Tax Free State
  - State that does not tax aircraft
  - Flyaway state
- There are also some exemptions that may apply
  - Occasional/Casual/Isolated Sale
  - Common Carrier
- Or you can reduce your Sales Tax by using
  - Trade-in Allowance, or
  - Sale for Resale



# State Taxes – Use Taxes

- However, now that the purchaser has avoided the Sales Tax, the owner/purchaser, now has the Use Tax to contend with.
- Use Tax is imposed by a state to compensate for the sales tax lost when an item is purchased outside of the state, but is used within the state.
- This is typically where the trouble begins





# State Taxes – Use Taxes

- The application of the **Use Tax** is generally based on the following:
  - Where aircraft is based/domiciled, or
  - Where aircraft is maintained, or
  - Where the owner of the aircraft does business
  - Where owner is a resident
  - Where does the aircraft go at the completion of a trip
  - Where the aircraft goes on a frequent basis
    - Registration Rules (Virginia)
- Pick a state!!!!



# State Taxes – Use Taxes

- As with the Sales Tax, there are some Use Tax exemptions.
- Any exemption you are going to consider needs to be carefully looked at and adhered to.
- Some exemptions are the same as the Sales Tax, such as –
  - Occasional/casual/isolated sales
  - Common Carrier
  - Sale for Resale



# State Taxes – Use Taxes

- However, some **Sales Tax** exemptions do not carry over to the **Use Tax**, such as:
  - Fly-away
  - Trade-In



# Part 135

- So how do all these rules apply to aircraft operated under Part 135?
  - There is a certain amount of risk in any state in which the aircraft will land and take-off
  - How many “days” is an aircraft in a state can trigger any one of the below, which in turn could trigger a use tax.
    - Personal Property Taxes
    - Aircraft Registration Fees
    - License Taxes



# Part 135

- States who will tax Non-Resident aircraft
- I call these “Gotcha” States
  - Gotcha State = A state that may impose a tax or fee even though an aircraft has been properly registered in another state and has paid the taxes, but comes into their state on a “regular” basis
    - Registration Fees, License Taxes or similar tax
      - AZ, VA, MN, WA, ME
        - » FL – Bringing aircraft into state within 6 months of purchase (Effective July 1, 2010 new 21 day rule within 1<sup>st</sup> 6 months)
    - Also **any** state with Personal Property Taxes
      - KY, TX, CA, MO



# Part 135

- Intrastate Commerce
  - Flights that begin and end is the same state.
  - Many states tax commercial flights that are flown within their state
    - AZ, SD, NM,



# Sales/Use Taxes on Maintenance

- Sales/Use Taxes on Maintenance
  - Parts
    - Exemptions usually mirror the Sales Tax exemption
      - Check for fly away exemptions
  - Labor
    - Separately stated, usually exempt
  - Work done in one state, domiciled in another (non-resident)
  - Exemptions
    - Fly away exemptions
    - Florida weight exemption



# State Tax Changes '09-'10

- CA (FY 08-09) Began imposing their personal property tax on Fractionally owned aircraft
- GA – (7/1/09 – 6/30/2011) The sale of engines, parts, equipment and other tangible parts used in the maintenance of non-resident aircraft is exempt from sales tax. (Gov signed into law on May 4, 2009, extended previous exemption by 2 years)
- OH (6/24/08 & 2/1/09) Sales of materials, parts, equipment or engines used in the repair or maintenance of aircraft (aircraft means aircraft that weigh more than 6,000 pounds) are exempt from the state sales/use tax.





# State Tax Changes '09-'10

- CO (8/8/08)–Flyaway Exemption, if sold an non-resident and removed within 120 days after the date of sale.
- ID (7/1/09) The sale, lease, purchase or use of aircraft primarily for air ambulance services are exempt from sales/use taxes.
- MN (7/1/09) State sales tax increase from 6.5% to 6.875%
- NV (7/1/09) School support tax increase from 2.25% to 2.6% bringing the overall state sale/use tax rate to 6.85%



# State Tax Changes '09-'10

- NY (6/1/09) The definition of transporting for hire was changed to not include the transporting of agents, employees, officers, members, partners, or directors of affiliated companies.
- UT (1/1/09)
  - State sales/use tax rate increased from 4.65% to 4.7%
  - The aircraft registration fee changed to .4% of FMV and the Uniform Fee changed to \$25
- MI (6/11/09) Flyaway exemption extended to sales of new aircraft as well as used aircraft.



# State Tax Changes '09-'10

- CA (4/1/09) Temporarily increased state sales tax from 7.25% to 8.25% until 6/30/2011.
- NY (7/11/09) Sunset date on maintenance exemption removed. Was due to expire 12/1/09.
- MA (8/1/09) Increased sales tax from 5% to 6.25%
- TX (8/13/09) Aircraft used exclusively in agricultural operations are exempt from sales/use taxes.
- WV (7/1/09) The assessed value of aircraft for ad valorem purposes shall now be its salvage value. Salvage value is the lower of fair market salvage or 5% of the original costs



# State Tax Changes '09-'10

- IL (1/1/10) Parts used in aircraft will be exempt from the state sales/use taxes
- AZ (6/1/10) State Transaction Privilege (Sales) and Use Tax increase of 1%. (5.6% - 6.6%)
- NM (7/1/10) State Sales/Use Tax increase of .125%. (5% - 5.125%)
- IN (7/1/10 – 9/30/10) – Non-resident aircraft can be registered in IN and not be subject to IN sales/use tax if taxes have been paid in another state.



# State Tax Changes '09-'10

- UT (7/1/10) –
  - Defines an aircraft maintenance repair and overhaul provider, and
  - Provides for some maintenance exemptions when done by one.
- FL (7/1/10) –
  - Aircraft that come into the state within the first 6 months of ownership and are in the state for a total of less than 21 days will not be subject to sales or use tax.
  - An exemption now for aircraft (parts and labor used in the maintenance of such aircraft) used primarily in a fractional ownership program and a maximum tax of \$300.



# State Tax Changes '09-'10

- WA – Dodged a bullet this year, proposed .5% excise tax did not get approved.
- KS – Sales/Use tax is proposed.
- MA, RI & CT sales/use tax exemptions still in place.



# State Tax Planning Strategies

- Look at what your exposure will be?
  - Very hard to hide an aircraft
- What is the risk?
  - Depends on the state
    - CA, TX, NY, OH, FL, IL, MI, AZ, VA, MO
- Pay Taxes somewhere, claim a state!
- Plan BEFORE you buy and operate the aircraft!!!
- If it sounds too good to be true, it probably is!



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