

Be Smart When Buying an Airplane

Buying a new or used aircraft is always a complex decision, at best. Long before the pre-purchase inspection and price negotiations are over, there are issues to consider that could ultimately impact your expenses and tax consequences after the transaction is complete.

On the federal level, tax law is the same for all 50 states. State laws vary tremendously, however. The only way buyers can formulate any kind of credible strategy to reduce their income tax, minimize capital gains tax and possibly reduce or eliminate property tax - or even sales tax - is to seek counsel with someone who's thoroughly familiar with their state's tax code as it applies to aviation.

In California, for example, Sacramento-based Associated Sales Tax Consultants, Inc. (ASTC) specializes in sales and use tax. The firm's expertise encompasses a wide range of services, including how aircraft owners can legally avoid sales and/or use tax. ASTC offers a program that deals with aircraft and vessels that will be used in California within the first few months of ownership. If potential buyers retain the firm before they make the purchase, ASTC guarantees that the taxpayers will be able to legally avoid California tax liability.

Joseph Micallef, who is president of ASTC's Aircraft and Yacht Division, says that his staff knows how confusing sales tax law is. "We always explain to potential clients that two basic things are required in order to support a claim for an exemption." First, he notes, "It's essential that accepted standards for both the form and the substance of the transaction are met." Equally important, however, is that the taxpayer "adequately document the possession, storage and use of the property." Adds Micallef, "It's not sufficient simply to do all the things the law requires to exempt the transaction."

According to Micallef, an aircraft buyer in California, for example, could read the laws in that state which pertain to a purchase for out-of-state use. The taxpayer could then accomplish all of the things that are required, including out-of-state possession as well as using and storing the aircraft outside California for a long enough time period to meet the requirements of California Sales and Use Tax Regulation 1620(b)(3). If the forms and documents that support the actual use of the property aren't provided to the tax agency, however, the transaction might still be considered taxable. "In many cases," Micallef says, "the state doesn't question the transaction until after the aircraft is sold to another party, which makes it very difficult to gather the logs and receipts."

That's where preplanning your purchase becomes so important. There are hundreds - perhaps even thousands - of accountants in this country who are experts at handling aircraft expenses once you own the airplane, but the number dwindles when you look for advice before the acquisition.

Acquiring sales tax advice from anyone other than a sales tax expert is, in most cases, "a waste of time and money," Micallef believes. "We constantly take over cases where a taxpayer is in trouble after receiving advice from an attorney or CPA. Only someone who works in the sales tax arena all day, every day, can remain current with the law. This area of tax law is complex, the targets are constantly changing and the potential tax assessment is very costly. This is especially true," he points out, "when you add the

additional interest and penalties that can range from as little as 10% for failure to file up to a 50% penalty for registering an aircraft out of state in an attempt to evade tax.”

If maneuvering to avoid sales tax seems like waving a red flag in the tax auditor’s face, Micallef notes that ASTC has been defending taxpayers since 1980 and, during that time, has handled tens of thousands of issues, but has lost only eight cases. Some aircraft owners have contacted ASTC after having battled the State Board of Equalization for several years, and even then, he has occasionally convinced the Board to reverse its position.

No one, Micallef says, has ever failed to support an aircraft exemption if the buyer allowed ASTC to plan the purchase before taking possession - and simply followed the firm’s expert advice.

If you have any questions regarding this article, other sales and use tax issues, or want to know if you qualify for an exemption contact Joseph Micallef at (916) 369-1200 or visit us on the web at www.aircraftexemption.com.

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