

## **Is There a Legal Way to Avoid Sales Tax?**

Every person who has contemplated an aircraft purchase in the last few years has asked the question, "Is there a legal way to avoid sales tax?" Most of these people ponder this question with the same seriousness as "Will I win the Lotto tonight?"

Many people have heard the horror story of a friend who tried one of those schemes and would wind up with penalties and interest that doubled or tripled the original tax liability. A few have been embarrassed when their attorneys and CPAs laughed at them for asking the question.

People who purchase aircraft fall into one of the following categories.

1. Those who hope they can avoid sales tax on their upcoming purchase.
2. Those who pay the sales tax.
3. Those who tried and failed to avoid sales tax on their last purchase.
4. Those who successfully avoided sales tax on their last purchase.
5. Those who tried to avoid sales tax on their last purchase by eluding the tax agency and are functioning under the illusion they'll never get caught.
6. Those who have so much money they'd rather pay the tax than think about dealing with a tax collector.
7. Those who believe that only millionaires with a large staff of accountants and lawyers can legally avoid sales tax.
8. Those who believe that professionals who claim to be able to assist them to legally avoid tax operated out of a covered wagon selling snake oil in a previous life.

Justice Oliver Wendell Holmes of the Supreme Court proclaimed that every citizen of the United States has a right as well as an obligation to avoid taxes. What is against the law is evading taxes. A quick reading of the dictionary should point out the difference between avoid and evade.

According to Webster's New College Dictionary the definitions of avoid include:

1. To keep away from : shun
2. To keep from happening.
3. *Law.* To annul or make void : invalidate.

According to Webster's New College Dictionary the definitions of evade include:

1. To escape or avoid by cunning.

2. a. To avoid the performance of fulfillment of their responsibilities. b. To fail to make payment of.
3. To avoid giving a direct answer to.
4. To elude or baffle.

Too many people have successfully “evaded” sales tax on aircraft purchases by slight of hand and cunning. They have established a culture that leads prospective buyers down the path to believing that only those who participate in illegal schemes get away with not paying taxes. This is so far from the truth that it should be out of sight for aircraft owners.

The true statement is anyone can successfully avoid sales tax on an aircraft purchase. There is only one thing that a prospective aircraft owner should have to consider when it comes to sales tax. Are the steps necessary to legally avoid tax more costly than the tax?

At this point the federal government collects taxes by primarily using an income tax, therefore the questions about sales tax are related to different rules in every state.

For example, If you are considering a purchase of a \$2,000,000.00 aircraft and you live in a state that has a sales tax rate of four-percent you are facing a tax of \$80,000.00. The same purchase in a state like California is subject to over \$160,000.00 in tax. When you add on the city, county and various other special districts it can go even higher. Conversely, there are currently five states that have no sales tax. They are Alaska, Delaware, Montana, New Hampshire and Oregon.

To further aggravate your search for information each state has specialized rules about aircraft purchases. Some examples of conflicting state rules are:

1. In Kansas some transactions between two people, in which neither party is in the business of selling aircraft are exempt. In California a transaction between two people, in which neither party is in the business of selling aircraft, the buyer owes the tax not the seller.
2. In some states, when a resident of that state buys an aircraft outside of the state where he is a resident it is exempt of sales tax. However, as soon as he brings the aircraft into his state it is subject to use tax. The rules vary from state to state as to the right of the purchaser to use his aircraft outside of his state for a period of time that renders the transaction exempt. In some cases it takes three months and in some states it takes twelve months.
3. Some states only tax a purchaser on the difference between the sales price and the value of the trade-in. Some tax the retail price of the transaction without regard to a trade-in.
4. If a purchaser registers his purchase in one of the “sales tax-free” states to avoid the sales tax he may be subject to a 50% penalty in his home state.
5. If a purchaser is not careful about his method of taking possession outside of his state of residency he may create a sales tax liability in one state and a use tax liability in another.

It is this maze of confusing rules and inconsistent requirements state by state that causes many people just throw their hands up and pay the tax. They are very aware that they don't have to

confront this issue on most other purchases so they can become paralyzed by the fear that some hidden danger will imperil them when they buy an aircraft.

It is this fear that agitates them to the point that rational evaluation of facts dissipates. Normal clear thinking adults who regularly make decisions about where to spend their time and money, and where to go on vacation, lose this ability when they think about taxes on an aircraft purchase.

There isn't a plot by state agencies to attack aircraft owners. The single issue that creates the confusion is the fact that a transaction involving an aircraft isn't bound by the limitations that almost every other purchase is. Obviously, you don't walk into Wal-Mart to buy a power drill and think about taxes because of the low price. What isn't so obvious is that the power drill can't change its physical location for the purpose of the transaction.

The truth is that a lot of the strategies used by people to legally avoid sales tax on the purchase of aircraft are available on a purchase of any kind of property. It is the mobility of the product as well as the price that forces taxpayers into the box of thinking that the tax exemptions are only available to limited products.

The mythology of sales tax exemptions further confuses the issue. There are a significant number of people who perpetually confuse potential buyers by repeating unsubstantiated stories. For example, an arrogant individual proclaims "it's simple all you have to do park it out of state." Research indicates that he has heard stories from other know-it-alls and repeats them without prejudice even though his statements are totally false.

The only reason he gets away with it generally rests in inconsistent enforcement of the taxing agency's own rules. This does make it possible for Mr. Know-it-all to have some substantiated cases of proof he is correct. The real reason may be because of lengthy statutes of limitations in some states can take nearly a decade before the case is actually challenged. Additionally if a state charges fraud, there is no statute of limitations. As a matter of practicality it is possible if they discover an aircraft transaction occurred that is outside the statute of limitations in their state they will charge fraud so they can assess the tax.

The other historical problem is one of terminology. People in the aircraft industry tend to use buzz words to communicate. These buzz words have a tendency to stick when they are attached to certain subjects, even though when compared to tax law they fail. The confusion around the use of the term "Part 135 exemption," has trapped many aircraft owners into interest and penalties.

When you mix an industry that misuses definitions with an inconsistent tax code enforcement you can easily see the tax traps that are mistakenly set by the industry personnel for its own members. We have no evidence of a plot by any tax agency against aircraft owners. Usually the problems are created by bad advice mixed with a flagrant desire to avoid taxes of any nature.

The desire to avoid taxes is admirable, the ability to get good sales tax information is virtually non-existent. The problem's existence is simple to explain. Sales tax law is a highly specialized area that doesn't attract much professional attention because the potential size of the market is minuscule. Lawyers and C.P.A.'s can afford to spend time learning about IRS rules because most of the population of the U.S. pays income tax. Further, many avenues of education exist for professionals to learn about income tax. None exist for sales tax, other than within the agency for

its employees.

Sales tax is typically the responsibility of the retailer, therefore the problem primarily exists only for the fraction of the population that has seller's permits. For example, in California, with a population nearing 40 million, the real market is less than 500,000 businesses.

The sad result is that professionals oftentimes advise their clients to just pay the tax, or lead a potential taxpayer down a path that results in additional tax, interest and penalties. This doesn't happen because of incompetence. It occurs because tax agencies often have a unique way of conflicting with their own rules in order to collect taxes. If your lawyer or accountant doesn't have the astute understanding how to get access to the inner workings of a tax agency you can be at risk.

A simple reading of a tax code is never the only place to gather understanding. A sales tax professional must be willing to spend thousands of hours getting to know the nuances of each law and how the taxing agency has historically and currently dealt with the issues. Upon studying the history of a tax agency, a sales tax expert will be able to build an effective strategy even in the face of diametrically opposed decisions by the tax agency on facts that are the same. The cost for a taxpayer to educate himself sufficiently in the subtleties of sales tax laws will exceed the potential tax. The educational process for a do-it-yourself sales tax expert is paved with failed attempts that often times double and triple the original amount of tax due. The most efficient and effective manner of legally avoiding sales and use tax rests clearly in the decision to hire a sales tax expert with a proven track record of victories for their clients before the sales tax agency. Asking for client referrals is your best source of verifying the claims.

It shouldn't be a long drawn out process. Remember there are very few firms in the entire country that specialize in sales tax cases. A review of the yellow pages in all the major cities in the country may reveal that several major metropolitan areas have none. It will still be worth the long distance phone call to save yourself from overpaying your taxes. Of the firms that do specialize in sales and use tax matters, there is a small portion of them who have worked for the taxing agency or who have staff that has; beware their credentials.

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9700 BUSINESS PARK DRIVE, SUITE 300  
SACRAMENTO, CA 95827  
916.369.1200 T  
[WWW.AIRCRAFTEXEMPTION.COM](http://WWW.AIRCRAFTEXEMPTION.COM)  
[INFO@AIRCRAFTEXEMPTION.COM](mailto:INFO@AIRCRAFTEXEMPTION.COM)