

Use Tax Exemptions

(prior to October 1, 2004, and presumably after July 1, 2006)

In the absence of a transaction qualifying for an exemption because it meets the requirements as a common carrier, the only manner in which a California resident can purchase an aircraft exempt of sales and use tax is by taking possession out of state. However, merely accepting delivery in another state, or taking delivery and parking it in a hangar for several months seldom insure a situation where the transaction will be held as non-taxable.

Section 6201 of the Revenue and Taxation Code imposes a use tax on the storage, use or other consumption in California of tangible personal property purchased for storage, use or other consumption. The general test for determining whether property was purchased for storage, use or other consumption in California is set out in subdivision (b)(3) of Regulation 1620, which states as follows:

"Property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside the state of California one-half or more of the time during the six-month period immediately following its entry into this state."

Various statutes also create presumptions that property was purchased for storage, use or other consumption in this state. For example, Section 6246 of the Revenue and Taxation Code provides:

"It shall be further presumed that tangible personal property shipped or brought into this state by the purchaser was purchased from a retailer on or after July 1, 1935, for storage, use or other consumption in this state."

Once you establish the sales tax exemption by properly documenting the out-of-state delivery, it will be your responsibility to set up the factual circumstances and basis for you to be exempt of the use tax once the aircraft subsequently comes back into California.

The steps you need to take to establish the out-of-state exemption are as follows;

1. Maintain irrefutable proof of delivery.
2. Once you establish out-of-state possession, you have exempted the aircraft from California sales tax.
3. You must then establish the use tax exemption.
4. Maintain incontrovertible evidence of all movement of the aircraft.

5. Authenticate “first functional use” outside California

6. Use it outside of California for a period greater than 90 days prior to entry into California.

The official pamphlet put out by the Board of Equalization states this warning to all taxpayers attempting to use this exemption, “The staff should examine the functional use of the property outside California for the 91-day period to determine whether or not the use tax applies. Time when the property was not being used for the purpose for which it is designed should be excluded from the 91-day exemption.”

OR,

7. Use it outside California for a period greater than 50% of the 180-day test period which starts the first day it enters California if it is within the first 90 days of possession.

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