

STATE TAX PLANNING

Nel Stubbs

When purchasing an aircraft, whether it is for the first time or you are replacing an existing aircraft, there are a myriad of issues facing the new owner: Federal Aviation Regulations, Insurance, Finance, Costs, Depreciation, Federal Excise Taxes, Liability, Risk, Personal Use of Aircraft, and, not least of all, State Taxes.

State tax planning is often something that is left to the last minute when it should be one of the first things that you review when purchasing your aircraft. Not only is it necessary to understand all the taxes affecting aircraft ownership and operations in your state, but also the taxes in other states where you may have business or the aircraft goes into frequently. Each of the 50 states has its own way of interpreting its own rules, much less considering the rules of neighboring states.

When trying to understand your tax obligations, you will need to identify state taxes applicable to your operation, not only in your state but in other states as well. These taxes should include, but not be limited to, sales tax, use tax, registration fees, ad valorem taxes, property taxes, license fees/taxes, operating fees, fuel taxes, and "gotcha taxes".

SALES TAX

A sales tax is imposed on the sales price of tangible personal property by the state in which the sale occurs. In most cases, the sales tax is paid by the purchaser and collected and remitted to the state by the seller.

Alaska, Montana, and New Hampshire do not have a state sales tax. Oregon does not have a sales tax; however, they have a "corporate activity tax". Delaware does not have a state sales tax; rather, they have a gross receipts tax that is imposed on the total consideration received by a wholesaler for goods physically delivered within the state. However, aircraft that weigh 12,500 pounds or more are exempt. Massachusetts, New York, and Rhode Island do not impose a tax on aircraft, and Connecticut does not impose a sales tax on aircraft weighing more than 6,000 pounds. Mississippi, Oklahoma, North Dakota, South Dakota, Illinois & Virginia impose a special tax on aircraft in lieu of the general sales tax. This tax is generally lower than the state sales tax. South Carolina and North Carolina limit the tax on aircraft to \$300 and \$2500, respectively.

Several states have exemptions to the sales tax that apply to aircraft sales. Some of the common exemptions/exceptions to the state sales tax are common carrier, fly away, occasional sale, sale for resale, and related entity transfers. In addition, several states have a trade-in credit, which reduces the basis upon which the tax is applied.

As with all exemptions and exceptions, they can be narrowly applied, and the criteria for the exemption will vary greatly from state to state. The common carrier exemption is a good example. Some states require that the aircraft be operated exclusively under a commercial operating certificate, as is the case with Kentucky. In Colorado, only an aircraft used by a commercial airline, an airline carrying freight or passengers on a regularly scheduled flight, is exempt.

Sales taxes also apply to aircraft maintenance parts and labor. However, again, some states offer exemptions for the sale of certain parts and labor. Florida, Tennessee, and Arkansas are a couple of states that have exemptions for aircraft that fit a weight category or are removed from the state within a certain period of time.

Generally, there is a labor cost that is applied to aircraft repairs and maintenance, and if it is separately stated on the invoice, it is exempt from the state sales tax. However, fabrication labor is usually still subject to sales tax.

USE TAX

Aircraft are usually subject to the tax laws of the state in which the aircraft is domiciled. A lot is said about avoiding the sales tax by taking delivery of an aircraft either in a tax-free state or a state with a flyaway exemption. However, even though one

may have avoided the state sales tax, it is now the use-tax laws of the state where the aircraft is going to be hangared that are of the most concern.

A use tax normally applies to the use, storage, or consumption of tangible personal property in a particular state. A use tax could be imposed on almost everything that might be brought into the state. Because the enforcement of such a tax is extremely difficult, most states chose to focus their efforts on big-ticket items, such as aircraft. Over 90% of the states have a compensating use tax as a backstop to the sales tax. So, how does a state know if an aircraft is in its state? While many states require an entity to register their aircraft in the state, other states obtain information from the FAA regarding where the aircraft is registered. And sometimes it is as simple as having a tax collector sit at the airport and take down N numbers so they can be crosschecked with state records. States are becoming increasingly aggressive in collecting taxes on aircraft.

If you have already paid the sales tax on the purchase of an aircraft in the state where the sale took place, most states will give credit for the sales tax already paid.

AIRCRAFT REGISTRATION FEES

Aircraft registration fees are assessed at the state level and are usually an annual or bi-annual fee. The method of valuation and the amount vary greatly from state to state. Some states use the aircraft registration fee merely to track new aircraft registered in their state, and the fee is relatively low. In most cases, the aircraft registration fee is dedicated to the aviation/transportation fund, while other states use this fee as a means to fund aviation programs within the state.

PERSONAL PROPERTY (AD VALOREM) TAXES

Personal property taxes are usually assessed at the local level, usually in the county where the aircraft is hangared, and are always an annual tax. Unlike the aircraft registration fees, these personal property taxes are usually very significant in their amount and the impact they can have on an aircraft operation. In most states, either the aircraft registration fee or the personal property tax applies; only Virginia, Alaska, and Utah apply both. However, Colorado, Delaware, Florida, Maryland, New Jersey, New York, Pennsylvania, and Vermont do not impose either. Unlike the aircraft registration fee, no personal property taxes are dedicated to an aviation/transportation fund.

When most entities are purchasing an aircraft, they are aware of the state and local sales taxes; however, aircraft registration fees and personal property taxes are often overlooked. Since these taxes and fees are imposed annually and can be significant, it is wise to understand how and when they are applied.

FUEL TAXES

Forty-seven states impose a tax on fuel used in aviation, either in the form of an excise tax, sales tax, or both. Texas, Connecticut, and Rhode Island do not impose any tax on aviation fuel. There are some exemptions from these fuel taxes; however, they are usually limited to commercial operations, Federal and state governments, and agricultural operations. It is always wise to check into any tax exemptions that may be available. Over 30 states dedicate all or a portion of the revenue collected from fuel taxes to an aviation/transportation fund to support general aviation and non-federally funded projects within the state.

OTHER TAXES & FEES

Beware, some of the taxes and fees imposed on an aircraft do not fall under the heading of a registration fee or property tax; rather, they are referred to as a license tax, uniform fee, operating fee, excise tax, etc. These taxes and fees can be significant, as in the case of Arizona's license tax. This tax is .5% of the Fair Market Value of the aircraft.

This article is intended to provide a broad overview. When starting the tax planning process, it is always a good idea to contact an aviation tax specialist to help guide you through the state tax planning process.