US sales & use tax for private aircraft

Tax considerations

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Flying private typically offers comfort, privacy, and convenience. However, the lease or purchase of a private aircraft comes with a high cost, including US sales and use tax considerations. In this article, we will explore the implications of sales tax laws and use tax in US on aircraft purchases and leases.

Purchase of private aircraft

The sale of aircraft is subject to US sales and use tax in 45 states and the District of Columbia, unless an exemption applies. Sales tax laws generally apply where title and possession are transferred.

Sales tax exemptions

Some states provide outright exemptions for the sale of all aircraft. For example, New York and Massachusetts exempt aircraft sales if certain criteria are met.[1]

Example: Massachusetts exempts the sale of aircraft, including the sale of repair or replacement parts exclusively for use in aircraft. No documentation is required to receive this exemption.[2]

Additionally, some states have a "fly-away" exemption related to the sale of an aircraft, allowing an out-of-state buyer to take possession of an aircraft without paying sales tax if the aircraft is immediately removed from the state.

Example: Florida exempts aircraft purchased by nonresidents from sales tax if the sale is made through a registered dealer and the aircraft is removed from the state within 10 days.[3] The buyer must sign an affidavit confirming their understanding of the exemption laws.[4] This exemption does not apply to sales to Florida residents, corporations with Florida resident officers or directors, or entities controlled by Florida residents.[5]

Exemption documentation requirements for fly-away exemption

Purchasers must maintain detailed documentation for the state in which the aircraft is purchased to support its exemption from tax. Missing or incorrect documents can lead to exemptions being denied and significant tax liability. In general, purchasers should maintain the following documentation:

- A copy of the purchase agreement.
- An affidavit signed by the seller verifying where the purchaser took receipt of the aircraft and specifying the date and delivery location.
- Flight logs from the date of purchase until the date the aircraft left the state to show the state where the initial flight occurred.
- Detailed documentation certifying that the aircraft will be removed from the state within a specific period (if relevant).[6]

Use tax in US

In addition to sales tax considerations, it is important to be aware of potential use tax obligations. Use tax is typically imposed when tangible personal property, including an aircraft, is purchased without the payment of sales tax where there is no applicable exemption. Accordingly, even if sales tax does not apply at the time of the aircraft's purchase, use tax may apply if the aircraft is stored (hangared) or used in a state that does not provide for a sales/use tax exemption.

Use tax may be due where the aircraft is hangared, as this location serves as the aircraft's primary base, and where the aircraft is predominantly flown.

California interstate and foreign commerce exemption

Some states offer interstate and foreign commerce exemptions for aircraft used primarily in interstate and foreign commerce. The scope of this exemption depends on the extent of interstate use and the degree of residency within the state. For instance, California has established testing periods after which the aircraft is considered exempt.

In California, use tax is presumed due for aircraft brought into California within 12 months of purchase, unless the aircraft meets the interstate and foreign commerce exemption.[7] California exempts aircraft purchased out of state and used primarily in interstate or foreign commerce for business. To qualify, the aircraft must be purchased and first used outside California, with principal use in transporting goods or passengers across state or national boundaries. California use tax is not due if 50% or more of the aircraft's flight time is for interstate or foreign business use during the six-month "Test Period" following its entry into California. After this period, personal use does not affect the exemption.

California generally requires that purchasers maintain detailed documentation to support the interstate and foreign commerce exemption in California including but not limited to the following:

- Flight logs detailing the business purpose of each flight from the date of purchase through the state's applicable test period.
- Documentation supporting each flight's business purpose, such as meeting minutes, signed affidavits, or business trip emails.
- Federal income tax returns showing the aircraft's depreciation as a business asset.

Tax considerations: How to lease a private jet

Many states provide a sales tax exemption for aircraft purchased for resale or lease. This means the initial purchase is not subject to sales tax, but the lessor must collect use tax on the lease payments, which is calculated based on the lease amount and remitted to the state periodically.

Sourcing considerations

If an aircraft is leased to a lessee in a different state from the lessor, the tax treatment can become complex. Use tax may be due in the state where the aircraft is hangared or used or where the lessee takes possession of the aircraft, rather than the location of the owner/lessor of the aircraft. Accordingly, a lessor collecting tax on the lease streams received from the lessee may be required to register and remit tax in multiple states based on where the lessee uses the aircraft.

Example: If an aircraft is leased from a Florida-based company to a lessee in New Jersey, the lessor may need to collect Florida sales tax on the lease payments if the aircraft is delivered to the lessee in Florida. However, if the aircraft is used in New Jersey, then the lessor may be required to remit use tax to New Jersey on certain lease payments received while the aircraft was in that state.

California leases of mobile transportation equipment

In California, an aircraft is considered mobile transportation equipment (MTE), defined to mean "equipment for use in transporting persons or property for substantial distances," which is treated differently than leases of tangible personal property in California.[8]

A key difference between leases of MTE and other types of equipment is that the lessor is considered the consumer of the MTE. Accordingly, the lessor must pay tax based on the equipment's purchase price unless the lessor timely elects to report and pay its tax liability measured by the "fair rental value" of the MTE (i.e., the amount of rentals required by the lease).[9] For California leases of non-MTE, the lessor must report tax on the fair rental value unless they make a timely election to pay tax on the purchase price of the leased property.[10]

For MTE leases, if the election is not made on time, the lessor loses the option to use fair rental value, and the tax must be paid based on the purchase price of the equipment.[11] This election cannot be changed once made.[12] This could lead to double taxation if the aircraft is leased in another state that imposes sales/use tax on the lease stream.

Accordingly, a state-by-state analysis of aircraft classification and related rules is necessary to understand the multi-state sales and use tax implications of purchasing an aircraft for lease to third parties.

Summary

Navigating the US sales and use tax implications of purchasing and leasing private aircraft can be complex, but with guidance from a multidisciplinary team that understands these considerations, you can make more informed and tax-efficient decisions with confidence.

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1. ***See, e.g., Tax Law - TAX § 1115(a)(21)***; Mass. Gen. Laws ch. 203 § 17.
2. ***See*** Mass. Gen. Laws ch. 203 § 17.
3. ***See*** Fla. Admin. Code R. 12AER24-5.
4. Ibid.
5. Ibid.
6. ***See*** California Department of Tax and Fee Administration, "Tax guide for purchasers of aircraft," accessed March 2025.
7. Cal. Code Regs. tit. 18, § 1620.
8. Cal. Code Regs. tit. 18, § 1661(a)(1); see Cal. Rev. & Tax. Code §§ 6051, 6201; Cal. Rev. & Tax. Code §§ 6094(d), 6244(d); Cal. Code Regs. tit. 18, § 1660(a)(2)(A); California Department of Tax and Fee Administration, Leasing Tangible Personal Property, Pub. 46 (Apr. 2022).
9. ***See*** Cal. Rev. & Tax. Code §§ 6051, 6201; Cal. Rev. & Tax. Code §§ 6094(d), 6244(d); Cal. Code Regs. tit. 18, § 1660(a)(2)(A); California Department of Tax and Fee Administration, Leasing Tangible Personal Property, Pub. 46 (Apr. 2022).
10. Ibid.
11. Ibid.
12. Ibid.