

# TAX MATTERS

*A newsletter dedicated to informing California Aircraft and Vessel owners about taxes*

*Prepared and distributed by Aero & Marine Tax Professionals*

## Is There a Legal Way To Avoid Sales Tax?

By Thomas Alston

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 tax. 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. 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. "*SUPREME COURT OF THE UNITED STATES, GREGORY vs HELVERING 293 U.S. 465.* 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 \$200,000.00 aircraft and you live in a state that has a sales tax rate of four-percent you are facing a tax of \$8,000.00. The same purchase in a state like California is subject to over \$16,000.00 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 by the state that causes many people to 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 good and evil, where to spend their money, and where to go on vacation, lose this innate 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, there is the arrogant blowhard who blithely proclaims, "It's simple; all you have to do is 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 their own rules within the taxing agencies. 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 fairly lengthy statutes of limitations in some states it 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 nomenclature. 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 the swirls around the use of the term, "Part 135 exemption" has trapped many aircraft owners into interest and penalties.