

TAX MATTERS

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

Prepared and distributed by Aero & Marine Tax Professionals

Where should I take possession of my aircraft?

Definition of physical possession: This is where a party representing the seller (or the seller himself) and a person representing the buyer (or the buyer himself) transfer physical possession and control of the aircraft from the seller to the buyer.

An example of transferring physical possession would be when a car dealer hands the buyer the keys to his new car.

This question of "Where should I take possession of my aircraft?" comes up every day. The answer is always, "IT DEPENDS." In most cases, it depends on who the seller is and in what state you are planning to take physical possession of your aircraft. But our caution is that you should never take possession inside California.

This is not a case of my being coy with a potential client - it is the truth. There are many variables that add up to determine the correct answer. Our firm specializes in California sales and use tax so, all the data in this article is written from the perspective of an aircraft that may become subject to an assessment in California by virtue of registration with the FAA to an address in California or any subsequent use inside California within the first twelve months of ownership regardless of where it is registered.

Warning: You can be a resident of Oregon, take physical possession in a state other than California and register your aircraft to an out-of-California LLC or corporation and you still may be subject to tax in California.

Example of when the identity of the Seller determines which course of action may be required:

If the seller is an individual and the buyer is an individual, many states consider this an "occasional" or "casual" sale. This means the transaction is not subject to tax.

California does not recognize either an "occasional" or "casual" sale regarding an aircraft transaction. Arizona and Nevada grant the occasional sale status. Oregon is always a safe place to take possession because Oregon is one of the few states that has no sales and use tax. However, possession in a non-sales tax state does not exempt the sale from tax in the state of primary or subsequent use.

If the seller is a retailer of aircraft, regardless of which state the seller is located in, it will be a taxable transaction. The State of Nevada can assess sales tax against the seller if they detect continuing deliveries inside Nevada. Additionally, if the seller is a company that is located inside Nevada, it would be required to have a Nevada seller's permit, then the occasional or casual sale does not apply.

The state where physical possession occurs determines the set of rules that must be followed.

The primary thing that must be known about the rules in a particular state is that they all are different. They often use the same language but apply different meanings.

Some states have a "fly-away" rule. In general, this means that an out-of-state buyer can come into their state and take possession as long as they immediately leave. For example, a California buyer can go to Kansas and take possession of a new Cessna and not be subject to tax in Kansas as long as the aircraft is removed within ten days. A Kansas buyer can come into California and take possession without becoming subject to California tax as long as he immediately leaves. However, he must never bring the aircraft back inside California for the subsequent twelve months. A California resident can take possession inside Texas and take training in Texas before the aircraft is removed and still not be subject to Texas tax.

Some states allow a delay in leaving their state after taking initial possession for training and some also allow maintenance. In general, it is safest to take possession in a non-sales tax state if you are unsure of how the rules work in any given state.

The point of all this is that you must be careful when you decide where to take possession. Each state has its own rules and methods of enforcement. Trying to make a sales and use tax decision about an aircraft can be confusing because if your frame of reference is in California and you apply what you know about California to a different state like Nevada or Arizona you can trap yourself into owing tax.

Where should I register my aircraft?

Many people believe that they can set up an LLC in Delaware or any other location outside California in order to avoid sales or use tax in California. The state where the LLC or corporation is registered has nothing to do with legally avoiding tax in California. In fact, as I have mentioned before many times, don't leave things to chance.

If the State of California decides to, they can charge you with fraud. The following section of law will be their support.

6485.1. 50 percent penalty. Any purchaser of a vehicle, vessel, or aircraft who registers it outside the State of California for the purpose of evading the payment of taxes due under this part shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vehicle, vessel, or aircraft.

Why don't I just become an aircraft dealer so I can buy aircraft without paying tax?

Everyone knows someone who routinely brags about this resale scheme. Well the following sections of law explain the truth.

6094.5. Improper use of certificate. Except as provided in Sections 6012.8 and 6012.9:

(a) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes.

(b) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor punishable as provided in Section 7153.

Don't hesitate to protect yourself.