

# TAX MATTERS

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

*Prepared and distributed by Aero & Marine Tax Professionals*

## **You Need to Know the Difference Between Sales and Use Tax or You'll Pay for Your Ignorance.**

This article contains information that is designed to help a prospective buyer to understand the maze known as California Sales and Use Tax Laws and Regulations. This first section will contain some definitions. It is intended to clear up questions, such as, "Who owes the tax?" and "What is use tax?"

The summary will explain why these definitions are important to you and give examples why. It is felt that with the basic understanding of these terms you can determine prior to the transaction who will ultimately be responsible for the tax. The information contained herein will apply whether you are buying a \$20,000.00 ski boat or a \$2,000,000.00 aircraft.

### **Definitions**

#### **Sale:**

Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

#### **Retail Sale:**

A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

#### **Gross receipts:**

Gross receipts mean the total amount of the sale or lease or rental price.

#### **Sales Tax:**

Sales Tax is imposed on retailers for the privilege of selling tangible personal property at retail. The tax is measured by the gross receipts from retail sales. The obligation to pay sales tax is on the seller.

#### **Use Tax:**

Use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from a retailer. The use tax rather than the sales tax applies to purchases shipped from an out-of-state point to a California consumer. The obligation to pay use tax is on the purchaser.

#### **Mobile Transportation Equipment (MTE):**

Mobile transportation equipment includes equipment such as railroad cars and locomotives, buses, trucks (except "one-way truck rental trucks"), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment. It does not include passenger vehicles.

#### **Vessel:**

Vessel means any boat, ship, barge, craft, or floating thing designed for navigation in the water except: (There is a list of exceptions to the above sentence.)

#### **Aircraft:**

Aircraft means any contrivance designed for powered navigation in the air, except a rocket or a missile. "Aircraft" includes an airframe or a fuselage even without an engine.

**Retailer of Vehicle, Vessel or Aircraft:**

Every person making any retail sale of a Vehicle, Vessel or Aircraft as defined above is a retailer.

**Seller:**

When the retailer is not otherwise required to hold a seller's permit, he or she is exempted from the computation of the sales tax on the gross receipts from the sale.

**Application of Tax****Sales tax does not apply to:**

Sales of vessels and aircraft by a person not required to hold a seller's permit by reason of the number, scope, and character of the person's sales of such vessels or aircraft.

Vessels and aircraft when included in any transfer of all or substantially all of the property held or used in the course of business activities of the transferor and when after the transfer the real and ultimate ownership remains substantially similar.

**Payment of Tax by Purchaser:**

Purchases of MTE from any person other than a person required to hold a seller's permit by reason of the number, scope, and character of the person's sales of such MTE, as the case may be and not otherwise specifically exempt shall report and pay tax to the board.

A purchaser who holds a seller's permit, or to whom a consumer's use tax number has been assigned, must include the tax in the purchaser's return for the period in which the MTE was purchased.

A purchaser who does not hold a seller's permit, or to whom a consumer's use tax number has not been assigned, shall make a return and pay use tax, measured by the sales price of the vessel or aircraft, on or before the last day of the calendar month next succeeding the month in which a return form is mailed to the purchaser, or the last day of the twelfth month following the month during which the vessel or aircraft was purchased, whichever period expires earlier.

**Vessel or Aircraft Purchased Through Brokers:**

Notwithstanding any other provision, when a person purchases a vessel or aircraft from another person through a broker, the purchaser is relieved from the liability for use tax on the transaction only to the extent that he or she:

1. Has paid an amount as sales or use tax to the broker, and
2. Has obtained and retained a receipt from the broker showing the payment of such tax.

The purchaser is relieved from liability only to the extent of the amount paid, and for which a receipt as provided, but remains liable for any amount of tax later determined to be due. An amount designated as sales or use tax collected by the broker from the purchaser constitutes a debt owed by the broker to the state and the broker shall be liable for that amount as if he or she were engaged in business in this state required to collect that amount as use tax from the purchaser.

The following is a list of reasons why California residents need to know the difference between sales tax and use tax:

1. If you purchase MTE from a California dealer while the MTE is located inside California he or she owes the sales tax, however, the dealer can reimburse itself it from you.
2. If you purchase MTE for use inside California from an out-of-state dealer, you are liable for use tax and must file the tax return and pay the tax. Unless the out of state dealer has nexus with the State of California.
3. If you purchase MTE for use inside California from a individual, whether he or she is located

Many people will tell you to wait until the Board sends you a bill. **THIS IS WRONG.** The state does not have to notify you in a timely manner. It is your obligation to file the tax return that is due in a timely manner.

4. If you want to be able to qualify for most of the available exemptions, you must always take possession while the property is located outside California and you must meet the requirements of a legal definition of "first functional use" before the aircraft enters California the first time. First functional use depends on the type of aircraft as well as your intended use.

Therefore, always request as part of an offer to purchase that the seller deliver your aircraft or vessel to you outside the State of California. The rules about where to take delivery are as varied as each states' laws apply to your specific type of purchase. **ALWAYS SEEK PROFESSIONAL GUIDANCE.**

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