

Double the Sales Tax **State Taxation of “Flip” Transactions**

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Whether the cause be more international sales due to a falling U.S. dollar, delivery times for new aircraft extending beyond five years, or simply the nature of any particular transaction, more and more aircraft sales are occurring in the form of a back-to-back sale, or a “flip”. For one reason or another, it is becoming very common for a broker or other party to take title in from a seller and then “flip” that title immediately to a buyer. This party serves as an intermediary between the buyer and seller, assisting in negotiations and providing advice.

There are several risks involved in either performing the role of an intermediary or participating in a transaction that uses an intermediary, not the least of which is state sales tax exposure. Even as anyone regularly involved in the sale of an aircraft is familiar with various fly-away exemptions or no-tax states, the basic nature of sales tax is often overlooked in flip transactions. This neglect often results in greater tax and penalty exposure for all parties involved.

Sales tax, generally speaking, is imposed upon the *transfer* of personal property from one party to another. In a flip transaction wherein the intermediary takes title to the aircraft, even for a very brief moment in time, *two transfers occur*. Even though in the eyes of the parties to the transaction only one sale has occurred, three different entities have held title to the aircraft at the end of the transaction.

Why would this be a problem? Most purchasers utilize fly-away exemptions, which require that the purchaser remove the aircraft from the state within a certain time period. On the first transfer in a flip transaction, the intermediary is the purchaser and that intermediary never removes the aircraft from the state. Rather, it is the end purchaser in the transaction that removes the aircraft. The intermediary never satisfies the requirements of the fly-away exemption. If the intermediary did not use another exemption for its purchase, such as a resale exemption, then that intermediary may owe tax and penalties on its purchase of the aircraft.

Why should anyone but the intermediary care? First, the end purchaser probably signed a contract with the intermediary that indemnified the intermediary for any sales taxes. Second, it is possible that the state in which the closing occurred could place a tax lien on the aircraft with which the end purchaser now has to contend. Third, while the initial seller may have been required to collect the tax from the intermediary, that seller may have been a sole purpose entity that no longer exists. So while the end purchaser may have successfully avoided sales tax on its purchase, it now has several months of legal work ahead in order to clear the title to its new aircraft.

Remember this as a general rule: any time title changes hands, sales tax probably applies, and an exemption must be found or sales tax must be paid on each transfer. Every state is different and may view these transactions in very different ways.

If you have successfully navigated the sales tax issues surrounding a flip, congratulations – but don’t relax too much. You may still owe use tax in the state in which your aircraft is based.

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