



# Sales & Use Tax Update

## New York Reform

Good news, notes Attorney Troy Rolf. The General Assembly of the State of New York recently passed, and Governor Andrew Cuomo signed, sweeping tax changes with positive impact for owners and operators of aircraft...



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General Aviation aircraft will be exempt from sales and use taxes in the State of New York effective September 1, 2015! Consequently, on or after September 1 of this year, New York residents and companies doing business in New York should be able to purchase business aircraft and base them in New York without liability for New York sales and use taxes.

The New York legislation may benefit not only taxpayers who purchase aircraft on, or after September 1, but potentially also taxpayers who currently own aircraft that are based in New York and

operate under either a leasing structure or a Part 135 structure for tax purposes, as well as New York taxpayers who historically have based their aircraft out of state to avoid New York sales and use taxes.

Under current New York sales and use tax laws, aircraft are fully taxable. That is, upon purchasing or using an aircraft in the state, sales and use tax generally must be paid. Since the tax is a percentage of the purchase price, and can be as high as 8.875%, the tax due on corporate jets can be hundreds of thousands, or even millions of dollars, depending on the purchase price of the aircraft.

### Past Mitigations

However, there are certain tax planning strategies that historically have been used to mitigate, or even eliminate such taxes. One such strategy is simply to avoid operating the aircraft in New York by basing it in Connecticut, which is a state that exempts all aircraft having a maximum gross take-off weight of more than 6,000 pounds. This strategy is risky since a single landing in New York, even years after the purchase, can trigger New York tax on the full value of the Aircraft. It is also inconvenient for many New Yorkers to have to travel to and from Connecticut each time they use their aircraft.

Another strategy commonly employed by New York aircraft buyers is to utilize a leasing structure. The leasing structure requires that a separate special purpose entity be used to acquire and hold title to the aircraft, and that the special purpose entity make no use of the aircraft whatsoever except to lease the aircraft to another person or company.

The lessee in such a structure would typically be the special purpose entity's parent company or another affiliate, or a licensed air carrier that will use the aircraft in charter service under Part 135 of the Federal Aviation Regulations. This structure takes advantage of the so-called "sale-for-resale" exemption in New York law that exempts retailers from paying tax on property purchased as inventory to be held solely for resale or lease in the ordinary course of business.

Utilizing such a structure allows the aircraft to be purchased without paying sales tax on the purchase price of the aircraft in one lump sum at the time of the purchase or first use in New York, but is not entirely tax free, since sales tax must then be paid on each lease payment received from a lessee, unless the lessee is a licensed air carrier that will use the aircraft in charter service under Part 135.

If the lessee is a licensed air carrier that uses

the aircraft in charter service, even when the owner's executives are on board, the lease payments received may also be exempt from sales and use taxes, potentially resulting in a structure that is entirely free of New York sales and use taxes. But there are other taxes, costs and trade-offs associated with using an aircraft solely under Part 135, even for the owner's travel, that makes such a structure unpalatable to many owners.

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### Post-September 2015

It is possible, perhaps even probable, that as of September 1, 2015, aircraft owners currently employing strategies similar to those described above may be able to simplify their ownership structures. Owners utilizing leasing structures and currently paying tax on lease payments may be able to stop paying such taxes.

That situation is not yet certain, however, since it is not yet clear how the New York Department of Taxation and Finance will interpret and implement the new legislation. The Department is expected to provide written guidance on such issues in the near future.

In the meantime, aviation attorneys, accountants, and other Business Aviation advisors are busy evaluating the new legislation to identify new opportunities for clients, including options to restructure and simplify aircraft ownership and operating structures.

So, if your company owns or operates a business aircraft that is either based in New York under a leasing structure or a Part 135 structure, or if you base your aircraft out of state and would like to either relocate your aircraft to New York, or simply to land in New York from time to time, now would be a very good time to contact your Business Aviation advisor to discuss how this new legislation may benefit you. ■

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