

Proper Delivery Outside of California Begins the “Use Tax” Exemption Process

By: Aero-tax Compliance Experts, LLC

Often it is believed that simply purchasing an aircraft outside of California eliminates the sales and use tax liability. There is a half truth here; properly purchasing an aircraft outside of California does eliminate the sales tax obligation, however, it does not eliminate the use tax.

Many people do not know how, or where to begin when going through the California sales and use tax exemption process. The simple answer is that you must take delivery of the aircraft outside of California. However, there is more detail behind the simple answer. For example, the contract of sale (purchase agreement) must specifically reference the location where the aircraft will be delivered to the purchaser outside the state.

As standard practice, we advise that the delivery occur in Oregon. Oregon is the closest, non-sales tax state in proximity to California that will not have a jurisdictional claim for sales or use taxes simply because the sale occurs there. Therefore, Oregon is often times the most convenient location. However, it may not be convenient in every situation. There are a total of five non-sales tax states: Oregon, Alaska, Montana, New Hampshire, and Delaware. Many other states have guidelines for non-resident purchasers taking delivery within their state without fearing tax repercussions. Be sure you know the rules.

To properly evidence the delivery outside of California, you must maintain a clear separation between the seller and the buyer. To accomplish this, the seller will be solely responsible for transporting the aircraft to the out of state delivery location, and the buyer will be solely responsible for getting to the delivery location independent of the aircraft they are purchasing. It is recommended that the buyer travel via commercial airlines to generate and obtain confirmation of the travel to the out of state delivery location. In addition, the buyer must not exercise any right or control over the property until after it is delivered (test flights are ok, but insuring the property prior to delivery could pose a problem).

Once the seller and buyer have converged upon the delivery location, it is now time to execute the paperwork. They will execute the FAA Bill of Sale, FAA Registration, any delivery receipts prepared by the seller and a proper delivery document for California sales and use tax purposes. This is referred to by many in the industry as a “6247 statement.” Beware, some tax representatives will charge you for this form. This form when properly and completely executed and notarized will evidence the out of state delivery. The insurance on the property can become effective as of this day.

Upon completion of the delivery, it is recommended that you immediately purchase fuel for the aircraft, using a credit card. Doing so will generate a receipt that will contain the date, location, tail number, and the buyers signature. Keep copies of all your documentation; you will need it to support your exemption.

The out of state delivery is only a small part of the exemption process. There are many factors which come into play when the Board of Equalization is determining where the “place of sale” was. They will look at the contract of sale, insurance binder, evidence of delivery, evidence how the parties converged upon the delivery location, FAA Bill of Sale, FAA Registration, and other pertinent information to develop their conclusion as to where the delivery occurred. If there are conflicting dates, locations, or details, they may conclude that the delivery occurred somewhere other than where you intended, and classify your delivery as “ceremonial.” This means your delivery may jeopardize the availability of the sales and use tax exemption from the onset.

This article was written by Joe Micallef, CEO of Aero-tax Compliance Experts, LLC. If you have any questions regarding this article, other sales and use tax issues, or want to know if you qualify for an exemption contact our tax experts at (916) 647-6407 or visit us on the web at www.Aero-tax.com.