

WELCOME 


Strategies for Managing Florida Sales and Use Tax on Aircraft

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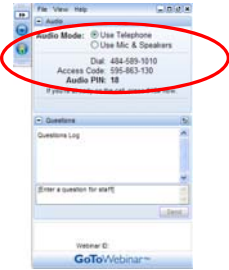



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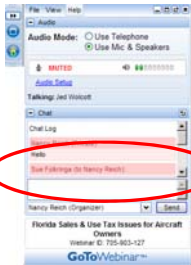
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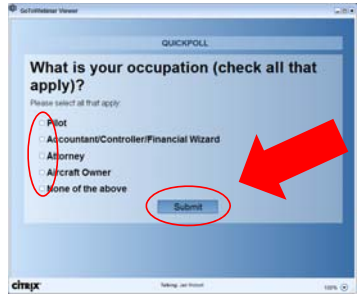
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Today's Presenters:




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ASEL**

&

**Sue Folkring CPA, MBA
ATP**




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Florida Aircraft Taxes

1. Basing, Selling, and Buying Aircraft in Florida
2. Exceptions, Exemptions, and Deferrals
3. Leasing Rules and Restrictions
4. Florida Use Tax Proration
5. Calculating the Proration

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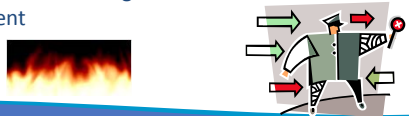
Florida Aircraft Taxes

Basing, Selling, and Buying Aircraft in Florida

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Enforcement is Increasing!


- More and more surveillance
- Cooperation between FL Dept. of Revenue (DOR) and FAA
- DOR collects FBO's hangar and parking rolls
- Electronic tracking (FlightAware)
- Rumors of DOR paying finder's fees
- Loopholes exist allowing DOR basis for continued enforcement



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Two Types of Taxes in Florida: Sales Tax and Use Tax


- Aircraft purchased, based, leased or used in Florida are **TAXABLE!**
- Buyer, lessee or end-user pays the tax
- Tax is based on aircraft cost or the amount of lease payment
- No sales tax difference for recreational or business use aircraft
- The end user is responsible for the tax in a chain of taxable transactions between dealers
- There is no personal property tax on aircraft in Florida
- Leases are taxable
- Air transportation is a service (i.e. "wet" lease), and is not taxable
 - Aircraft engaged in wet leasing, such as flight school aircraft, are taxable on their purchase price, unless tax is charged to the passenger



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Aircraft Sales Taxes

- Applies to aircraft purchased in Florida 20100 20115
- Location of aircraft at title change is key to state sales tax liability
- Florida tax rate is 6% + local option % (to \$5,000)
- Tax based on:
 - Cost of the aircraft, or
 - The amount of the lease payment
- No casual sales exemption in FL 20112




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Aircraft Use Taxes




- Applies to aircraft used or leased in Florida regardless of where purchased 20100 20104 20112
- Use tax is 6% + local option
- Use tax applies to:
 - Either the cost of the aircraft, or
 - The amount of the lease payment



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Florida Aircraft Taxes



Exceptions, Exemptions, and Deferrals


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Exceptions, Exemptions and Deferrals




- 20-day exemption for nonresident-owned aircraft visiting Florida 20121
- Fly-away exemption 20112
- Trade-in allowance 20136
- Maintenance exemption 20118
- Purchase for resale exemption 20115 20104
- Aircraft purchased for use in another state 20143
- Purchases by charities and churches 20144 20145 20146
- Sales or use tax deferral through use of leasing structure 20137 20104
- "Related Party" leasing structures 20104

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20-Day Exemption for Nonresident –Owned Aircraft Visiting Florida 20121 


- Old rule: Non-resident-owned aircraft visiting Florida in first 6 months of ownership were subject to FL sales tax
- New rule: Effective July 01, 2010, Non-resident owned aircraft may visit Florida for up to 20 days during first 6 months of ownership
- One landing in Florida equals one day
- Clearing customs (only) does not constitute a FL day
- No restrictions for aircraft entering Florida for
 - Flight Training
 - Repairs and alterations
 - Refitting or modifications purposes
- NOTE: New rule only addresses owned aircraft; DOR says leased aircraft are not eligible for the 20-day exemption!

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Definition of a Nonresident for the 20-Day Exemption 

- Owner has not made his/her principal place of domicile in Florida for 6 or more consecutive months
- Owner has not filed for homestead tax exemption on property in Florida and
- Owner has not declared themselves to be a Florida resident at the county clerk's office 20125
- Owner has not registered to vote in Florida
- TIP #10A01-11 issued June 29, 2010 20126

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"Fly-Away" Exemption Requires Sale through a FL Dealer 20112 

- Rule states that no sales tax is due on aircraft purchased in Florida by non-resident that departs Florida after purchase within guidelines
- Applies only if reported by a FL dealer and is:
 - Removed from Florida within 10 days **-or-**
 - Immediately placed in DOR-registered repair facility and removed within 20 days after repair completed
- Buyer must provide dealer with signed & notarized Affidavit of Removal from State – Form GT 500002 20127
- Failure to remove aircraft can result in tax, interest, and 100% penalty on buyer

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Trade-in Allowance

- Trade-in allowance provides for a credit for the value of an aircraft traded in on another
- Only the net sale price is subject to Florida sales tax
- Transaction must be simultaneous, like trading cars at a dealership
- Trade must be performed through a Florida reseller
- Trade-in provision does not apply to a IRC §1031 transaction 11000

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Aircraft Maintenance Exemptions 1/1/2013


- Replacement parts and equipment are exempt when used on aircraft with a MTOW of 2,000 lbs. or more, or a helicopter of MTOW of 10,300 lbs. or more, when installed in Florida. F.S. 212.08(5)(i) 20117
- Maintenance labor is exempt for repair of an aircraft with an MTOW of 2,000 lbs. or more, or a helicopter of MTOW of 10,000 lbs. or more, when installed in Florida. F.S. 212.08(7)(ee) 20118

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Purchase for Resale Exemption


- Aircraft purchased for resale are exempt from sales tax, providing:
 - Buyer holds a valid DR-13 FL resale certificate
 - Aircraft are marketed for sale
 - Aircraft are not depreciated
- Buyer must have the resale certificate prior to purchasing the aircraft
 - Owner must be a Florida resident
 - Company must be qualified to do business in FL
 - Make application on Form DR-1
 - Late-filed applications must pay a filing penalty
- Reseller pays a sales tax of 6% of 1% of the value of the aircraft for each month the aircraft is used
F.S. 212.06(13)

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Aircraft Purchased for Use in Another State 

- Aircraft purchased outside of Florida for use in another state are exempt from sales tax if it did not enter Florida in the first 6 months of ownership
- This rule does not apply to:
 - Aircraft used in a foreign country regardless if used outside the U.S. for more than 6 months
 - Lease of the aircraft
- Credit is allowed for sales or use tax paid in another state, territory, or District of Columbia if Florida tax becomes due

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Purchases by Churches, Charities, and Certain Political Subdivisions 


- Certain political subdivisions, churches, and nonprofit organizations are exempt from sales and use taxes
- Organizations that have IRS 501(c)(3) status qualify
- To purchase without tax the organization must have a *Consumer's Certificate of Exemption – Form DR-14*
- Purchases must be made in the name of the organization or church, and be made with organization funds
- Exempt organizations include U.S. and state government entities, community cemeteries, credit unions, fair associations, schools, colleges, veteran's organizations. See Form DR-5 for complete list of exempt organizations

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Leasing Rules and Restrictions 

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Sales/Use Tax on Leases



- Owner may purchase aircraft without paying tax if the aircraft will be leased to the user
- Owner must hold a valid FL Resale Certificate prior to purchasing the aircraft
- Final sub-lessee in a chain of leases pays the tax (pass-through lease). Each Lessor or sub-lessor must hold a resale certificate
- Leasing use must be exclusive: Any and all use of the aircraft must be subject to a lease
 - Related-party leases are permissible
 - Multiple leases are acceptable
 - Any use not subject to a lease invalidates the deferral, and 6% sales tax becomes due on the cost of the aircraft

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Leases vs. Management & Joint Venture Agreements



- Leases are subject to use taxes, and the tax is calculated on the lease payment
- Only “true” leases qualify for leasing deferral
- DOR is scrutinizing leases to see if they are actually management agreements or joint ventures
- Management agreements and joint ventures are not taxable
- **RESULT:** Owner is taxable when the aircraft is purchased for use in a joint venture or with a management agreement (i.e. 135 use, rental to a flight school, used in a rental operation, etc.)

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Typical Management Agreement/Joint Venture Structures



- Operator pays owner the revenue received from the use of the aircraft, less:
 - Operator’s commission
 - Fuel, maintenance, parking, and other DOC’s
 - Operator sends owner check (or bill) at end of month
- This is a management agreement!
- Owner is liable for sales tax on the aircraft!

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Typical Management Agreement with 135 Operator




Example:	
Charter income	15,000
Less: Commission	
Hangar	
Fuel	5,000
Net amount due lessor	6,000

Management Agreement

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Elements of a DOR/True Lease



- Requires shared risk between aircraft owner and operator
- Fixed monthly payments
- Long term; lease must have fixed termination date, cannot terminate at will
- Possession and control must shift to operator; owner must have limited or no authority over the use of the aircraft
- Operator pays expenses
- Think "Ford pickup truck lease:" Lessee operates the truck, pays for fuel and maintenance, and pays Ford a fixed monthly payment for multiple years.


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Related-Party Leases




- Prospective owner may create a leasing structure to take advantage of the lease deferral by creating a separate company to own the aircraft
- The aircraft owning entity dry leases the aircraft to the owner, or to another company owned by the owner
- The leasing rate must be economically realistic
- Leasing activity must be exclusive; all use must be subject to a lease, including owner use
- "Safe Harbor" lease rate is 6% of 1% of the cost of the aircraft per month. However, recent interpretation of the leasing rules by DOR suggest otherwise

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Provision for Inadvertent Filing Error 10400 


- Provision permits after-the-fact registration in certain circumstances, providing:
 - At the time of purchase, purchaser was not registered as a dealer
 - Purchaser was qualified to register
 - Purchaser registered as a dealer before applying for relief from any tax, interest or penalty
 - Purchaser *establishes justifiable cause* for failing to register
- Penalties (in addition to any taxes owed):
 - \$1,000 if corrected prior to a DOR examination 20139
 - \$5,000 if corrected once an examination has commenced

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Rules Applying to All Leases 

- Owning entity (lessor) must be a Florida Dealer before acquiring aircraft, otherwise penalties and interest will apply 20116
- When bringing aircraft in from another state for leasing, register as dealer before aircraft enters Florida 10400
- Most audits of resellers are caused by late-filing or non-filing of monthly DR-15 sales and use tax reports
- Memorialize the lease agreement in writing. State which party is to pay the sales or use taxes
- Lease use must be exclusive! Untaxed owner use will invalidate lease deferral

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Florida Aircraft Taxes 

Florida Use Tax Proration

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Taxable Use in a State

- U.S. Supreme Court has ruled that assets are not subject to tax when removed from the state.
Complete Auto Transport, Inc. vs. Brady, 430 U.S. 274 (1977):
 - *Test #3: taxation of only the apportionment of activity that transpires within the taxing jurisdiction*
- To be subject to tax, property must have nexus to the state
 - Occasional presence in a state is not sufficient to create nexus
 - For aircraft, overflights or occasional visits do not create nexus
 - Taxpayer must be a resident of the state, or maintain a permanent establishment in the state to be taxable
- Issue for aircraft is how to calculate and report within the FL regulations:
 - *Air Carrier* mileage apportionment 212.0598 FS
 - Other *Use-in-Florida* reporting methods

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Air Carrier Mileage Apportionment


- *Air Carriers* may apply for *Direct Pay Authority* 2012b
- Once granted, *Direct Pay Authority* permits the Air Carrier to apportion sales and use taxes by a formula based on miles flown within Florida vs. outside Florida
- If applicant has a FAA Part 135 license, provide a copy of the FAA certificate with the application
- If applicant is a Part 91 owner, ownership or operation of an aircraft *seems* to be adequate basis
- All applicants must file apportioned FL income taxes (i.e., be a C-corporation for income tax reporting) to be granted air carrier status

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Owner Lease to 135 Operator using Mileage Apportionment


- Tax on lease payments from an aircraft leased to a Part 135 Florida Air Carrier is reduced by mileage apportionment, providing:
 - Aircraft owner is a FL dealer
 - Use tax, due from Lessee, is applied to the lease payments
- For lease to 135, use tax on lease is reduced by the 135 operator's apportionment factor (percent)
- Burden of reporting responsibility shifts from owner to the air carrier
- Air carrier calculates and submits the tax on the lease to Tallahassee
- 135 operator may charge the tax back to owner

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Mileage Apportionment for Part-91 Operators 


- FL filing regulations “*seem*” to allow FAR Part 91 operator to make application to be an air carrier. Requirements are:
 - Applicant must file income tax return as a C-Corporation, including filing a Florida corporation income tax return
 - Florida corporation income tax return must apportion taxable income
- Either the lessor or the lessee may apply to be the air carrier
- Lessor and lessee may be related parties
- Owner should be aware that there is no direct statutory foundation to support P-91 operators as air carriers; original intent of legislation was to apply to airlines and charter operators

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Florida Aircraft Taxes 

Calculating the Proration

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Mileage Apportionment Calculation 

- Apportionment basis is the ratio of Florida revenue miles to system-wide revenue miles applied annually to all aircraft in operator’s fleet
- Air carriers sales and use taxes are reduced by the apportionment percentage, including leases
- Proration rate for the aircraft’s first year is based on an estimate; subsequent year rates are based on actual mileage 2012R

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P-135 Apportionment Calculation

Step 1

Total annual miles (fleet) (a)	13,524
Miles outside Florida	11,032
Florida miles (b)	2492
Florida apportionment (b-a)	18.4%

Step 2

Monthly lease payment	\$100,000
Florida sales tax %	.06
Monthly sales tax	6,000
Florida apportionment	18.4%
Florida tax payment	\$1,104

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Flight Tax Systems Florida Mileage Apportionment Report

Date	Aircraft	Flight #	Leg #	Flight Mile	Depart	Arrive	Status	Florida Miles	Miles Outside Florida
06/01/2012	N12347	101508	1	0.4	KDAL	KELP	969.0	0.0	969.0
06/01/2012	N12347	101508	2	1.8	KELP	KSAC	969.7	0.0	969.7
06/02/2012	N12347	101508	3	0.6	KSAC	KLAX	268.0	0.0	268.0
06/03/2012	N12347	101509	1	5.8	KLAX	MVCR	2,484.7	0.0	2,484.7
06/12/2012	N12347	101509	2	6	MVCR	KLAX	2,484.7	0.0	2,484.7
06/16/2012	N12347	101510	1	1.2	KDFW	KFGE	21.1	21.1	0.0
06/17/2012	N12347	101511	1	0.4	KLAX	KLAX	0.0	0.0	0.0
06/20/2012	N12347	101513	1	1.6	KFGE	KAGS	307.1	341.6	165.5
06/20/2012	N12347	101513	2	1.4	KAGS	KFGE	307.1	341.6	165.5
06/21/2012	N12347	101514	1	3.2	KFGE	MGGT	1,044.7	244.2	800.5
06/24/2012	N12347	101515	1	3.5	KFGE	KLAS	2,165.0	496.1	1,668.9
06/28/2012	N12347	101516	1	2.1	KFGE	HGNA	1,019.6	333.6	686.0
06/28/2012	N12347	101516	2	2	KGAK	KFGE	1,019.6	333.6	686.0
06/29/2012	N12347	101517	1	0.7	KFGE	KTPA	190.3	190.3	0.0
06/29/2012	N12347	101517	2	2	KTPA	KFGE	190.3	190.3	0.0
Totals:	15 Flights	52.3		13,524	2,492			18.4%	91.6%

Step 2

Monthly lease payment	\$100,000
Florida sales tax %	.06
Monthly sales tax	6,000
Florida apportionment	18.4%
Florida tax payment	\$1,104

All distances are reported in statute miles. Florida apportionment determined by latitude and longitude coordinates, as defined at FL Statute 220.14(2)(c). Mileage apportionment for air carriers or provider for all FL Statute 212.05(8), and further as provided at FL Reg 12A.1-09A(3)(7).

Florida use %

Used to reduce sales taxes on leasing to percentage of use in Florida.

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Sales/Use Tax Reduction Methods for Aircraft Owners and Operators

- Technical Authority Advisement (TAA) No. 96A-038 discusses a Florida owner of busses leased, without drivers, to entertainers for cross country tours. 20135
- The owner proposed paying Florida sales tax on lease payments based on the days the busses were present in Florida.
- DOR concurred, requiring the owner to keep detailed records and logs of the location of the busses at all times supporting the calculation, accompanied by sworn affidavits from the drivers.
- TAA methodology has been used by aircraft operators without comment or opinion by DOR

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Flight Tax Systems Florida Days Report



Report Name: Florida Days Report Owner: Demo Client

Date	Aircraft	Flight #	Lag #	Flight Hrs	Depart	Departure City	Arrive	Arrival City	Day Inside Florida	Day Outside Florida
03/01/2014	N1234T	101615	1	0.5	KORD	Chicago	KTEB	Teterboro	0	0
03/01/2014	N1234T	101615	2	2.5	KTEB	Teterboro	KFLL	Fort Lauderdale	0	0
03/01/2014	N1234T	101615	3	1	KFLL	Fort Lauderdale	KTLH	Tallahassee	0	0
03/01/2014	N1234T	101615	4	3.5	KTLH	Tallahassee	KLAX	Los Angeles	0	0
03/01/2014	N1234T	101615	5	2	KLAX	Los Angeles	KSEA	Seattle	0	0
03/01/2014	N1234T	101615	6	2	KSEA	Seattle	KSFO	San Francisco	0	0
03/01/2014	N1234T	101615	7	4.8	KSFO	San Francisco	KSDF	Louisville	0	1
03/02/2014	N1234T								0	1
03/03/2014	N1234T	101616	1	2	KSDF	Louisville	KAPF	Naples	0	0
03/03/2014	N1234T	101616	2	2.2	KAPF	Naples	KRBD	Dallas	0	0
03/03/2014	N1234T	101616	3	1.8	KRBD	Dallas	KSDF	Louisville	0	0
03/03/2014	N1234T	101616	4	3	KSDF	Louisville	KOPF	Miami	0	0
03/04/2014	N1234T								1	0
Totals:				11 Flights					33.3%	66.7%

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"Days-in-Florida" Proration for Part 91 Aircraft Owners



Step 1		
Days in month	(a)	30
Days outside Florida		20
Days in Florida	(b)	10
Florida ratio	(b/a)	33.3%

Step 2		
Monthly lease payment		\$100,000
Florida sales tax %		.06
Monthly sales tax		6,000
Florida ratio		33.3%
Florida tax payment		\$1,998

TAA 96A-038 2015

Note: This method is not directly supported by Florida statute or regulation. The TAA only applies to the named taxpayer

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"Days/Months-in-Florida" Proration's for Part 91 Owners



- Days-In-Florida method:
 - Based on Bus Company TAA
 - Requires a leasing structure; owners can dry lease to themselves
 - For each reporting period (generally monthly) the lease payment is reduced by the ratio of days-in-Florida to total days in the month
 - Payment must be made while aircraft is outside of Florida
- Months-In-Florida method:
 - Also requires a dry lease
 - Taxpayer pays tax on monthly lease payment for the full or partial months that the aircraft is in Florida
 - File zero sales tax reports for months that the aircraft is not in FL
 - Requires documentation supporting time outside of Florida


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Rules for Fractional Aircraft and Boat Owners 

- Florida residents buying fractional ownerships pay a one-time \$300 flat fee. Report on DR-15AIR 20130
- Maximum sales tax on boats is now \$18,000 (boat value capped at \$300,000). Avoids registering large vessels offshore 20111

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Thank You Very Much! 

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