

Tax Information Publication, No. 10A01-11-- Sales and use-- Taxability of persons and transactions-- Transportation-- Guidance on aircraft exemptions, ¶205-527, (Jun. 29, 2010)

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¶205-527. Tax Information Publication, No. 10A01-11, Florida Department of Revenue, June 29, 2010.

Sales and use: Taxability of persons and transactions: Transportation: Guidance on aircraft exemptions.— The Florida Department of Revenue provides guidance on the following recently enacted provisions: (1) the sales and use tax exemption for aircraft temporarily used in Florida; (2) changes to the nonresident removal exemption; (3) the definition of "fractional aircraft ownership program;" (4) the exemption for fractional aircraft used in a fractional aircraft ownership program; and (5) the maximum tax on a fractional ownership interest.

See ¶60-740.

Florida Department of Revenue

TIP #10A01-11

DATE ISSUED: June 29, 2010

Aircraft

This Tax Information Publication regarding aircraft contains information on the tax exemptions for aircraft temporarily used in Florida; changes to the nonresident removal exemption; definition of fractional aircraft ownership program; the exemption for fractional aircraft used in a fractional aircraft ownership program, and the maximum tax on a fractional ownership interest.

Aircraft Temporarily in the State

20-day Use Tax Exemption

Effective July 1, 2010, a nonresident of Florida will be exempt from use tax on his/her aircraft if the aircraft enters and remains in the state for no more than a total of 20 days during the 6-month period after the date of purchase.

For purposes of this exemption, a nonresident means a person who:

- Has not had his or her principal place of domicile in this state for a period of 6 or more consecutive months;
- Has not registered to vote in this state;
- Has not made a statement of domicile under section 222.17, Florida Statutes (F.S.); and
- Has not filed for homestead tax exemption on property in this state.

A nonresident corporation means a corporation incorporated under laws of another state or country, which does not maintain its chief or principal office in this state.

For purposes of this exemption, one day is deemed to be any portion of a day. For example: John Doe, a nonresident, buys an aircraft on July 2, 2010, in South Carolina. John Doe flies to the Bahamas on July 14, 2010. On the way, he stops at the Fort Lauderdale airport for two hours. John Doe returns to Florida from the Bahamas on August 1, 2010, when he stops at the Fort Lauderdale airport for an hour. John Doe does not return to Florida again during the remaining 6 months since his purchase. John Doe was in Florida for a total of two days during the 6-month period after buying the aircraft.

Likewise, a purchaser that meets the qualifications for the nonresidential removal exemption in s. 212.05(1)(a)2., F.S., will be exempt from use tax if the aircraft enters and remains in the state for no more than a total of 20 days during the 6-month period after the date of purchase.

Flight Training, Repairs, Alterations, Refitting, or Modifications

If a nonresident's aircraft enters Florida only for flight training, repairs, alterations, refitting, or modifications, the days the aircraft remains in Florida for these purposes do not count toward the nonresident's 20-day allowance. The nonresident must support the exemption with written documentation provided by in-state vendors or suppliers that clearly identifies the aircraft and the reason it was present in the state. Once completed, any remaining time in the 20-day period will continue to run, unless another exemption applies. Repairs to aircraft are taxable unless specifically exempt.

For example: John Doe, (a nonresident) bought his aircraft on July 2, 2010, in South Carolina. John Doe immediately flew his aircraft to Florida for flight training. The aircraft remained in Florida exclusively for flight training for 30 days before returning to South Carolina. John Doe may still return to Florida for 20 days without imposition of Florida use tax during the 6-month period after the date he purchased the aircraft.

Fractional Aircraft Ownership Programs

A "fractional aircraft ownership program" is defined as a program that meets the requirements of Federal Aviation Administration Regulation Title 14, part 91, subpart K, Code of Federal Regulations, except that the program *must include a minimum of 25 aircraft* owned or leased by the business or affiliated group, as defined in section 1504(a) of the Internal Revenue Code. These aircraft must be used in the fractional aircraft ownership program.

Maximum Tax on Sales or Use

Effective July 1, 2010, the maximum tax imposed on the sale or use of a fractional ownership interest in a fractional aircraft ownership program is \$300. The tax cap applies only where the sale is made by the Program Manager or the fractional aircraft ownership interest is transferred upon the Program Manager's approval.

The sale or lease of an aircraft to the fractional aircraft ownership Program Manager is exempt from tax. The Program Manager must be registered with the Department of Revenue and must present to the dealer a certificate stating that the purchase or lease is for aircraft primarily used in a fractional aircraft ownership program. See below for suggested certificate language.

For example, FlightAir operates a fractional aircraft ownership program pursuant to Federal Aviation Administration Regulation Title 14, part 91, subpart K, Code of Federal Regulations. FlightAir currently operates with 10 aircraft in its fractional aircraft ownership program. On July 1, 2010, FlightAir buys 2 more aircraft for its program. Both of these purchases are subject to Florida sales tax, since FlightAir did not operate a fractional aircraft ownership program with 25 aircraft.

Repairs

The sale or use of any parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft, to the Program Manager, operating a fractional aircraft ownership program with at least 25 aircraft, is exempt from tax. The Program Manager must be registered with the Department and present to the dealer a certificate stating that the repair or maintenance is for aircraft primarily used in a fractional aircraft ownership program.

Suggested Language for the Program Manager's Exemption Certificate

This is to certify that the aircraft purchased or leased, or that the parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft, on or after ___(date) from ___(Selling Dealer's Business Name) is purchased or leased for the following purpose as checked in the space provided.

- Aircraft to be primarily used in a Fractional Aircraft Ownership Program that meets the requirements of 14 C.F.R., part 91, subpart K, and that operates a minimum of 25 aircraft in the program.
- Parts or labor used in completion, maintenance, repair, or overhaul of an aircraft that is primarily used in a Fractional Aircraft Ownership Program that meets the requirements of 14 C.F.R., part 91, subpart K, and that operates a minimum of 25 aircraft in the program.

I understand that if I use the property or service for any nonexempt purpose, I must pay tax on the purchase or lease price of the taxable property or service directly to the Department of Revenue.

I understand that if I fraudulently issue this certificate to evade payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third-degree felony.

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Program Manager's Name _____

Program Manager's Address _____

Name and Title of Program Manager's Authorized Representative _____

Sales and Use Tax Certificate of Registration No. _____

By _____ (Signature of Program Manager or Authorized Representative)

Title _____

Date _____

Tax Calculations

The maximum \$300 cap includes the county discretionary sales surtax ("county surtax"). The \$300 is to be distributed between the state and county, with no additional surtax due.

Example:

On or after July 1, 2010, a fractional aircraft ownership interest is purchased for \$400,000 in Florida, in a county that applies a 1% county surtax rate. For purposes of reporting, the Program Manager takes the maximum tax and subtracts the surtax to determine the maximum state sales tax. The county surtax applies only to the first \$5,000 of the sale amount.

In order to determine the taxable sales amount, divide \$300 maximum tax by the total tax rate, including the surtax.

$$\$300 \text{ maximum tax} / 7\% \text{ total tax rate} = \$4285.71 \text{ taxable sales amount}$$

Then multiply the taxable sales amount by the 6% state sales tax rate to determine the amount of sales tax collected at 6%.

$$\$4285.71 \text{ taxable sales amount} \times 6\% = \$256.15 \text{ sales tax collected at 6\% bracket rate}$$

Subtract the sales tax collected at 6% from the maximum tax, \$300.

$$\$300 \text{ maximum tax} - \$256.15 \text{ sales tax collected at 6\%} = \$42.85 \text{ county surtax}$$

Subtract the taxable sales amount from the gross sales amount to determine the exempt sales amount.

\$400,000.00	gross sale amount
- \$ 4,285.71	taxable sales amount
<hr/>	
\$ 395,714.29	exempt sales amount
\$256.15	sales tax collected at 6% bracket rate
\$42.85	county surtax at 1% tax due Lines 5, 7, and 10 on
\$300.00	Form DR-15, Sales and Use Tax Return
\$42.85	reported as county surtax on back of return on Line 15(d)

None of the taxable sales amount was exempt from the county discretionary sales surtax, since the taxable amount was less than \$5,000 (amount of the sale subject to the surtax). Therefore, 0 (zero) may be entered on line 15a for the amount exempt from county discretionary sales surtax.

References: Subsections 212.08(7); 212.05(2); 212.02(34); Section 212.0597, Florida Statutes; Chapter 2010-147, Laws of Florida (Sections 4, 7, 8, 9 CS/SB 1752, 2nd Engrossed)

FOR MORE INFORMATION

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit our Internet site at www.myflorida.com/dor or call Taxpayer Services, 8:00 a.m. to 7:00 p.m., ET, Monday through Friday, excluding holidays, at 800-352-3671.

Persons with hearing or speech impairments may call our TDD at 800-367-8331 or 850-922-1115.

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services, 5050 West Tennessee Street, Tallahassee, FL 32399-0112.

Don't delay-save today!

You can pay overdue taxes with no penalty and reduced interest under Florida's Tax Amnesty Program, July 1 to September 30, 2010. All taxes administered by the Department of Revenue are eligible, except unemployment tax and Miami-Dade County Lake Belt Fees. Visit www.myflorida.com/dor/amnesty to find out more.