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Airworthy *Alert*

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Private Aircraft on States' Radar for Tax Revenue

If you frequently fly to a branch office, second home or favorite vacation spot in another state - Beware. The economic downturn is not just affecting individuals and companies. State treasuries across the country are in desperate need of additional revenue, and your plane is a tempting target.

Our states are facing budget deficits in the multi-billions of dollars for fiscal year 2009, and with constituent voters feeling increasingly rebellious about tax hikes, states are looking for ways to "export" their taxes to people who do not permanently reside within their borders.

States are coming after aircraft owners with nearly every kind of tax imaginable — sales tax, use tax, property tax, registration tax, excise tax and fuel tax. Worse, each state is maddeningly different when it comes to which taxes apply and how and when they are enforced, and states do not necessarily respect the taxing authority of other states.

When an aircraft is purchased, many states impose a sales tax on the purchase price. Sales tax rates vary widely, but average between 5 and 7 percent, which on a $40 million aircraft can amount to more than $2 million. A sales tax typically only applies in the state where the aircraft is physically delivered. This why it is often recommended that you arrange to pick up your plane in a state such as Oregon or New Hampshire, where there is no sales tax, or in a state where you can claim a "fly-away exemption" (which allows you to avoid paying that state's sales tax as long as you can show you "flew away" within a certain specified period after purchasing the aircraft).

These days, however, avoiding a sales tax in one state can set you up for a use tax somewhere else. The rates for use taxes, applied on the use or storage of a plane in one state when acquired in another, can be as wince-inducing as a sales tax — and it does not take much to set them off. Maine, for example, is monitoring aircraft movement with flight-tracking software and taxing any aircraft that crosses into its airspace and spends at least 20 days in the state during the year following purchase. Florida has gone even further: The Sunshine State is imposing its use tax on aircraft temporarily brought into the state for a single pleasure trip within six months after sale by any purchaser who has some connection to the state, such as Florida residence, owning Florida property or being an officer of a Florida corporation.

Not to be outdone by the East Coast, California has started imposing its personal property tax on

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fractionally owned aircraft. Just one landing in the Golden State is all it takes and the entire fractional fleet will be hit with the state's personal property tax, based upon a ratio of California landings and departures to total worldwide operations.

In order to effectively deal with this onslaught, knowledge and planning are key. Before the aircraft is even purchased, plan out your ownership structure and expected use in advance: Where will the aircraft be hangared? What states will it visit and how often, particularly during the first year of ownership? Is leasing an option? In many states, you can purchase a plane tax-free if you put it in charter or lease it. Although the lease payments are generally subject to sales tax, over time this will usually amount to less than the one-time sales tax hit on the purchase price. (Make sure, though, you give yourself plenty of time to implement this plan, since some states require that the purchaser have a lease in place and register as a "retail dealer" before the sale goes through.)

Think carefully about where you want to register your aircraft. Just because your company is headquartered in one state does not mean you have to register it there, especially if you will be on the tax hook with another state by virtue of where you bought the plane or use it most of the time.

Finally, if you know you will be flying to another state frequently, find out in advance what that state's tax rules and enforcement policies are. Many states are now performing "ramp checks," contacting local airports to find out which tail numbers have been there and how often, and then sending the owners "It has come to our attention . . ." letters.

In the end, you might find there is no getting around paying some state taxes, but it is usually better to own the problem and address it head-on than play audit lottery with cash-strapped states.

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