



March 28, 2008  
Via Facsimile  
(301-695-2375)  
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Phil Boyer, President  
Greg Pecararo  
c/o Twyla Perkins  
Aircraft Owners and Pilots Association  
421 Aviation Way  
Frederick, Maryland 21701-4798

Dear Mr. Boyer:

Following up on receipt of your letter and conversations had by Jeff Kielbasa, Deputy Executive Director, with Greg Pecararo and Twyla Perkins, please find enclosed copies of a "Q & A" response from an industry internet publication, as well as a letter, whitepaper and chart furnished to a Florida legislative committee last week.

Generally, please know that the focus of the Florida Department of Revenue's use tax enforcement activities is on aircraft with a significant connection to Florida, not non-residents with no Florida connection only here on a temporary basis, and we will not be at Sun 'n Fun; we do not use "fly-ins" as enforcement activities. I think that most of your questions and concerns should be answered by the attached documents, but if you would like to discuss further, I would be happy to speak with you at your convenience at the number below.

Sincerely,

George "Tony" Hamm  
Chief Assistant General Counsel  
Florida Department of Revenue  
(850) 488-0712

cc: Lisa Echeverri  
Bob McKee  
Jeff Kielbasa  
Marshall Stranburg  
Lisa Echeverri

Enclosures

Child Support Enforcement - Ann Coffin, Director • General Tax Administration - Jim Evers, Director  
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- The focus of the Florida Department of Revenue's use tax enforcement activities is on aircraft with a significant connection to Florida (such as Florida resident, ownership of Florida real estate, officer in a Florida corporation, etc.)
- The Florida Department of Revenue does not conduct "ramp checks."
- The Florida Department of Revenue will not be at Sun 'n Fun, nor does it use similar "fly-ins" as enforcement opportunities.
- Legislation is currently pending that will provide aircraft with "safe harbor" treatment for limited use in Florida similar to that currently enjoyed by boats.

**1. Has the state's policy on applying or enforcing its use tax changed from the two-part test quote [below]? (According to a state Web site <[http://dor.myflorida.com/dor/taxes/sut\\_aircraft\\_owner.htm](http://dor.myflorida.com/dor/taxes/sut_aircraft_owner.htm)>:**

"Aircraft purchased and used outside Florida for more than 6 months are generally exempt when brought into Florida, if both of the following conditions are met:

- The owner has owned the aircraft for more than 6 months.
- The owner has used the aircraft in another state or states, U.S. territory, or District of Columbia 6 months or longer prior to bringing the aircraft to Florida."

**If so, when and which authority may be cited for the change?**

**ANSWER:** No. The state's policy, as expressed by the Legislature in Section 212.06(8)(a), Florida Statutes, states:

Use tax will apply and be due on tangible personal property imported or caused to be imported into the state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that ... it shall be presumed that tangible personal property used in another state, territory of the United States, or the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state. . . .

This provision applies to purchases made outside Florida. Please remember that Florida provides a full credit for any like tax paid to another state. This credit is provided to both Florida residents and nonresidents. Tax would only be due if the tax rate of the other state is less than the rate in Florida.

Section 212.05(1)(a), Florida Statutes, applies to purchases made in Florida. This provision permits a nonresident purchaser with no nexus (connection) with Florida to purchase an aircraft in Florida without paying Florida tax as long as the aircraft is removed from Florida within 10 days of purchase and the aircraft does not return to Florida within 6 months of purchase. A safe harbor is also provided for repairs and alterations as long as the aircraft is removed from Florida within 20 days of completion of the repairs or alterations.

- The sale must be made by or through a registered Florida dealer; and
- The purchaser must be a non-resident of Florida.

- not engaged in business in Florida in which the aircraft will be used.
- if a corporation – no officers or directors are residents of Florida.
- if a non-corporate entity – no individual with authority to participate in management, direction, or control is a resident of Florida.

**2. (a) Under which circumstances does the state impose its use tax on aircraft owned and operated outside Florida for less than six months and brought into the state temporarily?**

ANSWER: If an aircraft is purchased by a non-resident of Florida with no nexus (connection) to the state (i.e., not a Florida resident, does not own Florida property, is not an officer of a Florida corporation or corporation doing business in Florida) and the aircraft travels to Florida on a pleasure trip temporarily within 6 months of purchase, the state will not pursue or impose a use tax. The rationale is that the aircraft has not been “commingled” with the general mass of property in this state pursuant to Section 212.06(1)(a), Florida Statutes. Note that a circumstance different than the one described above would require further inquiry to establish the appropriate tax treatment.

However, Florida use tax may be due on an aircraft that is purchased in Florida and removed to another state, but returned here within six months. If the aircraft is purchased here and returns within six months for repair, however, no use tax would be due. If an aircraft is purchased in another state by a nonresident and brought here for repair, training or business use within 6 months of purchase, a use tax may be due.

**(b) Under which circumstances does the state impose its use tax on automobiles, recreational vehicles and watercraft owned and operated outside Florida for less than six months and brought into the state temporarily?**

ANSWER: Various statutory provisions have been enacted or case law has developed relating to these articles of tangible personal property that may lead to different treatment under certain circumstances. For example, automobiles and recreational vehicles purchased, licensed and titled in another state by a non-resident would not have a use tax liability if used here temporarily. Additionally, boats have a 20 day “safe harbor” exemption calculated from the date of first dockage or slippage pursuant to Section 212.08(7)(t), Florida Statutes.

**3. Has the state responded to Phil Boyer’s March 20 letter? Will the state issue a moratorium on applying its use tax to out-of-state aircraft? If not, why not?**

ANSWER: The Department does not have the authority to suspend the operation of statutes. The Florida Legislature is currently considering two bills that address temporary use of on aircraft in Florida. You can read about these bills on the Legislature’s website.

House Bill 1379

[http://www.flscnate.gov/session/index.cfm?BI\\_Modc=ViewBillInfo&Mode=Bills&SubMenu=1&Year=2008&billnum=1379](http://www.flscnate.gov/session/index.cfm?BI_Modc=ViewBillInfo&Mode=Bills&SubMenu=1&Year=2008&billnum=1379)

Senate Bill 2856

[http://www.flsenate.gov/session/index.cfm?BI\\_Mode=ViewBillInfo&Mode=Bills&SubMenu=1&Year=2008&billnum=2856](http://www.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&SubMenu=1&Year=2008&billnum=2856)

At the request of the House Committee on Economic Development, the Department of Revenue recently prepared a brief paper on this subject. It provides an overview of the historical background and current application of the sales and use tax to aircraft in Florida. A general matrix was prepared to accompany the paper. I have faxed copies of both for your information. Please keep in mind that the paper and matrix discuss the application of Florida law to some general types of situations. The outcome of any specific situation will depend on the facts and circumstances involved.

**4. Under what circumstances, if any, may the state impose its use tax on aircraft owned and operated outside Florida by a non-resident for less than six months? Under what circumstances, if any, may the state impose its use tax on aircraft owned and operated outside Florida by a non-resident for more than six months?**

ANSWER: If there is no nexus to Florida, Florida would not (and would be legally unable to) impose a use tax on aircraft purchased and operated outside Florida by a non-resident for less than (or more than) six months.

If the aircraft is brought into Florida within six months of purchase outside Florida for use related to training, repair, customization, or business, use tax may be due. Aircraft purchased and used outside Florida for 6 months or more would not be subject to tax.

**5. (a) Does the state's use tax apply to aircraft owned by out-of-state individuals as well as to out-of-state corporations, businesses, partnerships or other legal entities?**

ANSWER: The form of ownership is not the determining factor in the imposition of use tax. Rather, the nature and extent of contact with Florida are the determining factors.

**(b) Does it apply to aircraft used for commercial purposes or non-commercial purposes?**

ANSWER: If the aircraft is purchased out of state but visited the state for a few days for pleasure within 6 months of purchase, use tax would not be imposed. If the aircraft came in for repair or training within 6 months of purchase, it would be subject to use tax under current law. If used for business in Florida within 6 months of purchase, it would be subject to use tax. Under the provisions of Section 212.08(11), Florida Statutes, nonresidents who purchase an aircraft in Florida and will use the aircraft in interstate or foreign commerce are subject to sales tax on the purchase at the rate of tax in the state in which the aircraft will be domiciled (not in excess of 6%).

Executive  
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Lisa Echeverri

Child Support  
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General Tax  
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Property Tax  
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James McAdams  
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Administrative  
Services  
Nancy Kelley  
Director

Information  
Services  
Tony Powell  
Director

March 19, 2008

Via Hand Delivery

The Honorable Dorothy Hukill  
Acting Chair  
House Committee on Economic Development  
Suite 410, House Office Building  
402 S. Monroe Street  
Tallahassee, Florida 32399-1300

Dear Chairperson Hukill:

Pursuant to the Committee's request, I am enclosing for your review a brief whitepaper and matrix with respect to the historical background, enforcement and the Department of Revenue's application of the sales and use tax to aircraft in Florida. Unlike sales tax statutes related to boats, very little guidance has been provided regarding the application of use tax to aircraft. This has led to confusion and uncertainty regarding the tax status of certain activities. I hope the attached information is helpful in your Committee's consideration of these issues. Please let me know if I can provide additional assistance.

Sincerely,



Lisa Echeverri

cc: Bob McKee  
Jeff Kielbasa  
Marshall Stranburg

Enclosures

## Taxation of Aircraft in Florida

Information is currently circulating among aircraft owners that the State of Florida assesses a use tax on non-resident aircraft owners with no connection to the state, if they merely visit Florida for as little as one day within six months of purchasing aircraft. Although the law is not clear in this area, and clarification from the Legislature would be helpful, Florida does not assess a use tax on non-resident aircraft owners in every circumstance where an aircraft is brought to Florida within the first six months.

### **BACKGROUND**

Historically, the use tax was developed by states as a complement to the sales tax, a response to the practice of residents buying items out of state to avoid the state sales tax. Local merchants were competitively disadvantaged when local consumers purchased similar goods in a state where no sales tax or a lower tax was imposed. The states realized that they would lose economic activity and their sales tax base would be eroded because of this lack of parity between local purchases and purchases made in non-tax or lower tax states. The use tax was enacted to address these concerns. The use tax is collected against a taxpayer's use, storage, distribution, or consumption of property, typically purchased out of state, that would have been subject to sales tax had the goods been bought within the taxing jurisdiction. Over time, it has been applied not only to residents, but to those with a business interest or other significant economic presence in the state of use.

A guiding principle behind the enactment of a use tax is, therefore, that an in-state purchaser should stand to gain nothing by making an out-of-state or interstate purchase free of sales tax, because the use tax will apply when the property is brought into the taxing state for use. Florida recognizes this principle by imposing and collecting the use tax from the ultimate consumer of the property, who enjoys the use in Florida of the imported property. See Section 212.06(2)(b) and (4), Florida Statutes.

In order to avoid double taxation, every state that imposes a use tax provides for a credit against its use tax for sales or use tax paid to other states - Florida is no exception. If sales tax has been paid to another state upon purchase prior to importation into Florida, and circumstances would otherwise warrant the imposition of use tax here, credit is given for the tax previously paid to the other state.

Generally, the basis for imposition of Florida's use tax is Section 212.06(1), Florida Statutes. The use tax is due when tangible personal property "comes to rest" and becomes "commingled" into the mass of property in this state. What the Legislature meant by the use of those terms is not entirely clear; however, a consideration of the historical rationale for the enactment of a use tax indicates that a substantial connection to the state is required in order for property to become a part of the mass of property of the

state. In an apparent effort to deal with the problem of when an item becomes a part of the mass of property, Florida grants a presumption that tangible personal property used in another state for six months or longer before being imported into Florida was not purchased for use in Florida. See Section 212.06(8)(a), Florida Statutes.

### ***BOATS AND AIRCRAFT***

Although treated similarly in some ways, legislative treatment of boats and aircraft with respect to sales and use tax is not entirely uniform. Florida provides "safe harbor" provisions in Section 212.05(1)(a)2., Florida Statutes, specifically for boats and aircraft. Under the statute, no sales or use tax is imposed on the sale of a boat or an airplane by or through a registered dealer to a nonresident purchaser who removes the boat or airplane from the state within ten days after the purchase. If the boat or plane is to be repaired or altered following purchase, it must be removed within twenty days after the work is completed. Nonresident boat owners may purchase a decal allowing them to remain in Florida waters for up to 90 days following purchase from a registered Florida dealer, and that time may not be tolled for any reason.

Additionally, Section 212.05(1)(a)2., Florida Statutes, also allows an aircraft to return to the state for repairs within six months after the date of its departure without being in violation of the law if the aircraft is removed from the state within twenty days following completion of the repairs and appropriate documentation is provided to the Department of Revenue.

Boat owners enjoy additional safe harbor provisions not available to the owners of aircraft. Section 212.08(7)(t), Florida Statutes, allows any boat a twenty day safe harbor if it enters and remains in this state for a period not to exceed a total of twenty days in any calendar year. Additionally, with appropriate documentation, if a boat is brought into the state for repairs, alterations, refitting or modifications and placed in a registered repair facility, that twenty day period is tolled while the boat undergoes the work and any necessary sea trials. Like aircraft, boats are allowed to enter the state for repair work within six months of purchase, and the six month period provided in Sections 212.05(1)(a)2., or 212.06(8), Florida Statutes, shall be tolled during the completion of the work.

The Department's rule with regard to purchases made outside Florida implements the six month presumption language, but the focus is on aircraft, boats, etc. purchased in another state that have established a clear and substantial nexus with Florida through titling, registration or licensing requirements. No mention is made of aircraft, boats, etc. purchased in another state and titled, registered or licensed in that state, which appears to underscore and buttress the general proposition that the degree of connection to the state is the primary inquiry for imposition of the use tax.

### *COMPLIANCE ENFORCEMENT*

The Department of Revenue's Compliance Enforcement Section has two ongoing projects designed to discover persons who may have a tax liability. The first involves persons who have registered with the Department as aircraft dealers and who are remitting zero or minimal amounts of tax, and evidence was established that the aircraft was being flown in Florida. Generally, additional documentation as to how the plane is being used in Florida is requested from the aircraft dealer. The second project involves receiving and filtering information from an aircraft owner information database to discern Florida addresses and sales made by Florida broker/dealers to residents and non-residents. Non-resident corporate or other entities are researched further to determine if any of the corporate officers (or, if an LLC, member) are Florida residents, or to determine if the entity has substantial connection to the state. Again, note that it is the degree of connection to the state that is the area of inquiry. A merely incidental connection to the state is insufficient for the imposition of use tax.

### *APPLICATION*

The attached chart sets forth recurring scenarios that the Department daily encounters, ranging from the easily-determined Florida taxable (Florida resident buys aircraft in Florida for use in Florida) to the easily-determined non-taxable (non-Florida resident buys aircraft out of state for use out of state). As the scenarios shift to the more complex, however, questions arise and the analysis becomes more difficult. Additional facts and circumstances of the aircraft owner that come to light may have an impact on the taxability or non-taxability of the individual scenarios. As stated before, however, because of the historical rationale of the use tax, a merely incidental connection to the state is insufficient for the imposition of use tax.

### *LEGISLATION*

Although the imposition (or, as the case may be, non-imposition) of sales or use tax is based on nearly 60 years of accumulated legislative efforts, clarifying legislation in this area would certainly be welcomed and supported by the Department in order to address the concerns presented not only by the flying public at large but those who must administer the tax fairly and equitably.



Currently Nontaxable in Florida	Presumed Nontaxable in Florida	Credit for Tax Paid	Taxable in Florida
<p>Florida resident purchases an aircraft in another state without paying tax, aircraft never used in Florida.</p>	<p>Florida resident purchases an aircraft in another state without paying tax, no use of the aircraft in Florida until 6 months or more after purchase. Presumed not purchased for use in Florida.</p>	<p>Florida resident or resident of another state purchases an aircraft in another state and pays tax at a rate equal to or greater than the Florida rate. Full credit is provided for the tax already paid.</p>	<p>Florida resident purchases an aircraft in Florida for use in Florida.</p>
<p>Resident of another state purchases an aircraft in another state without paying tax, brings the aircraft into Florida 6 months or more after purchase for use related to training, repair, customization, or business.</p>	<p>Artificial entity owned by Florida resident purchases an aircraft in another state without paying tax, no use of the aircraft in Florida until 6 months or more after purchase. Presumed not purchased for use in Florida.</p>	<p>Florida resident purchases an aircraft in another state and pays tax at a rate less than the Florida rate, uses the aircraft in Florida within six months of purchase. Tax owed only on the difference between the rate paid and the Florida rate.</p>	<p>Florida resident purchases an aircraft in another state without paying tax, uses the aircraft in Florida within six months of purchase.</p>
<p>Resident of another state purchases an aircraft in another state without paying tax, brings the aircraft into Florida for de minimis personal use within 6 months of purchase. Not taxable, but law is potentially ambiguous.**</p>	<p>Resident of another state purchases an aircraft in another state without paying tax, brings the aircraft into Florida for de minimis personal use 6 months or more after purchase. Presumed not purchased for use in Florida.</p>	<p>Resident of another state purchases an aircraft in another state and pays tax at a rate less than the Florida rate, brings the aircraft into Florida within first 6 months of purchase for use related to training, repair, customization, or business use. Tax owed only on the difference between the rate paid and the Florida rate.</p>	<p>Artificial entity owned by Florida resident purchases an aircraft in another state without paying tax, uses the aircraft in Florida within 6 months of purchase.</p>
<p>"Flyaway exemption." Resident of another state purchases an aircraft in Florida and removes the aircraft from Florida within 10 days of purchase. Not engaged in business in Florida. No officers, directors, or individuals authorized to participate in management, direction, or control are Florida residents.</p>		<p>** Indicates areas HB 1379 and SB 2856 seek to clarify.</p>	<p>Resident of another state purchases an aircraft in another state without paying tax, brings the aircraft into Florida within first 6 months of purchase for use related to training, repair, customization, or business.**</p>

**NOTE: This chart is only intended to provide general information for the application of Florida law to a series of general fact patterns. Please keep in mind that the appropriate application of the law may vary depending upon the specific facts and circumstances involved.**