



COMMONWEALTH OF MASSACHUSETTS

Department of Taxation
Revenue Administration

MEMORANDUM

TO: R. C. Whitehead, Jr., Supervisor
Taxpayer Assistance Section
Office Services Division

DATE: July 24, 1985

SUBJECT: Aircraft Sales and Use Tax

This will reply to your memorandum of February 20, 1985 requesting information on the application of the Aircraft Sales and Use Tax to a variety of transactions.

- (1) When does the 5% penalty for failure to pay the Aircraft Sales and Use Tax begin to accrue?

§ 58.1-1501 defines "Aircraft" as "any contrivance used or designed for untethered navigation or flight in the air by one or more persons at an altitude greater than twenty-four inches above the ground."

§ 58.1-1510 of the Code states, in part, "when any person fails to make any return or pay the full amount of tax required by §58.1-1502 within thirty (30) days of the required filing and payment date, there shall be imposed...a penalty to be added to the tax, in the amount of five percent of the unpaid tax."

§ 58.1-1506(A) of the Code states in part, that "the tax on the sale or use of an aircraft required to be licensed by this Commonwealth shall be paid by the purchaser or user of such aircraft and collected by the Commissioner prior to the time the owner applies to the Department of Aviation for, and obtains, a license therefor." (Emphasis added).

§ 58.1-1502 of the Code imposes a tax on the retail sale of every aircraft sold in the Commonwealth...at a rate of two percent of the sale price of every such aircraft. Therefore, while § 58.1-1502 imposes the tax, § 58.1-1506 sets forth when such tax must be remitted. (Emphasis added).

When taken together, all of the above sections establish that the 5% penalty for nonpayment of the full amount of aircraft sales and use tax begins to accrue on the 31st day after the date on which an application for license is applied for and obtained. For example, if A applies for and obtains his license on March 1, 1985, he has until March 31 to pay the full amount of tax before any penalty will be imposed. However, on April 1, 1985, the 5% penalty will begin to accrue, and be added to the tax due.

- (2) Does the Aircraft Sales and Use Tax penalty apply to sales of airplane kits and inoperable or wrecked aircraft?

Prior to 1984, the Code prohibited the levy of the 2% aircraft sales and use tax on aircraft "not required to be licensed" in Virginia. This was interpreted by the department to mean that the 2% aircraft sales and use tax did not apply to sales of aircraft kits and inoperable aircraft.

However, House Bill 193, as enacted by the 1984 General Assembly, removed the prohibition to the levy of aircraft sales and use tax upon planes "not required to be licensed" in Virginia. Therefore, inoperable aircraft, including aircraft kits, are now subject to the aircraft sales and use tax and no longer subject to retail sales and use tax. (See Tax Bulletin 84-13, pg. 2).

Consequently, the 2% aircraft sales and use tax levied in § 58.1-1502 of the Code, applies uniformly to operable and inoperable aircraft, but the time for payment of such tax is postponed in the case of inoperable aircraft, until such time as such aircraft are licensed. Analogously, the penalty provisions apply uniformly to both operable and inoperable aircraft in that penalties will not accrue until 30 days beyond the date on which a license is applied for and obtained.

For example, if Taxpayer purchased an inoperable aircraft on January 1, 1985, and applied for and obtained a license for such aircraft by March 1, 1985, such taxpayer would become

liable for the penalties imposed by § 58.1-1510 upon the nonpayment of the full amount of the tax levied in § 58.1-1502, by March 31, 1985.

- (3) Does Virginia allow a credit for retail sales tax paid to another state for aircraft kits and/or component parts, where the completed aircraft is subsequently brought into and licensed for use in Virginia?

Aircraft Kits

In order to qualify for the credit against the tax, an out of state purchase of an aircraft kit must meet the definition of "aircraft" for Virginia aircraft sales and use tax purposes. As previously defined, "aircraft" means, "any contrivance used or designed for untethered navigation or flight in the air by one or more persons at an altitude of greater than 24" above the ground." Consequently, if A purchases an aircraft kit in North Carolina, subject to North Carolina's sales tax, which meets the definition of "aircraft", for subsequent use and licensure in Virginia, he would qualify for the credit against Virginia aircraft sales and use tax.

Component Parts

Component parts of an aircraft purchased out of state in separate transactions for subsequent use in Virginia, do not qualify for the credit against Virginia's aircraft sales and use tax. For example, if A purchases an aircraft engine in North Carolina, subject to North Carolina's sales tax, for installation and use in Virginia, he would not qualify for the credit against Virginia aircraft sales and use tax. Unlike aircraft kits, component parts are not considered "aircraft" for Virginia aircraft sales and use tax purposes.

- (4) Does the Virginia aircraft sales and use tax apply to sales of aircraft in Virginia for licensing and use outside Virginia.

§ 58.1-1502 of the Virginia Code levies and imposes a tax upon "the retail sale of every aircraft sold in the Commonwealth and upon the use in the Commonwealth of any aircraft required to be licensed by the Department of Aviation."

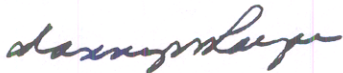
However, § 58.1-1506 of the Code provides that such tax, "on the sale or use of an aircraft required to be licensed by this Commonwealth shall be paid by the purchaser or user of such

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aircraft and collected by the Commissioner prior to the time the owner applies to the Department of Aviation for, and obtains a license therefor." (Emphasis added)

Therefore, to the extent that such aircraft purchased in Virginia are not required to be licensed in Virginia, the Virginia Aircraft Sales and Use Tax will not apply.

I hope that all of the above has been of some assistance to you, but please let me know if you have any further questions.



Danny M. Payne, Director
Tax Policy Division

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