



# COMMONWEALTH of VIRGINIA

*Department of Taxation*

## MEMORANDUM

**TO:** Mike Melson  
Director  
Appeals and Rulings Division

**FROM:** Mark Haskins  
Director  
Policy Development Division

**DATE:** May 2, 2008

**SUBJECT: Application of the Aircraft Sales and Use Tax to Aircraft Not Required to be Licensed with the Department of Aviation**

This is in response to your office's request for guidance concerning the application of the Virginia Aircraft Sales and Use Tax to aircraft not required to be licensed by the Department of Aviation. You state that questions have been raised by interested parties about this issue. The questions are focused on the effects of legislation enacted in the 1984 Session of the General Assembly. As explained in this memorandum, it is TAX's policy that, with very limited exceptions, the Aircraft Sales and Use Tax is not incurred unless an aircraft is required to be licensed by the Commonwealth.

Subsequent to the 1984 legislative changes, on July 24, 1985, Danny M. Payne, then Director of Tax Policy, issued a memorandum (copy attached) to Russell C. Whitehead, Jr., then Supervisor for Taxpayer Assistance, addressing different aspects of this issue. The purpose of this memorandum is to share Policy Development's research of the policy set forth in the July 24, 1985 memorandum on this issue and, as explained below, to confirm that its conclusions regarding this issue are still accurate and controlling.

### Establishment of the Aircraft Sales and Use Tax

Senate Bill 263 (*Acts of Assembly 1974*, Chapter 431) established the Aircraft Sales and Use Tax, effective September 1, 1974. This legislation enacted former *Va. Code* § 58-685.29, which provided in pertinent part that "[t]here is hereby levied and imposed . . . a tax upon the retail sale of every aircraft sold in this State and upon the use in this State of any aircraft . . ." This broad impositonal section, however, was subject to the limitations of former *Va. Code* § 58-685.32, which provided that:

The tax 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 State Corporation



Commission for, and obtains, a license therefor. No tax shall be levied or collected under this chapter upon the sale or use of an aircraft for which no license is required. No license shall be issued unless the applicant for license of such aircraft shows to the satisfaction of the State Corporation Commission that such tax has been paid. (Emphasis added.)

Accordingly, the Aircraft Sales and Use Tax clearly did not apply unless the aircraft was subject to state licensure. The Department of Taxation's Summary Sheet for Senate Bill 263 stated that the new tax was "similar to the Motor Vehicle Titling Tax." The titling tax must be paid when a motor vehicle must be titled in Virginia. The titling tax does not apply when the vehicle will be titled outside the Commonwealth.

#### Tax Treatment of Certain Aircraft Not Required to be Licensed

Historically, aircraft, not subject to state licensure, were subject to the Retail Sales and Use Tax because they did not qualify for the Retail Sales and Use Tax exemption provided by former *Va. Code* § 58-441.6 (x) for "aircraft subject to the tax under chapter 12.2 of Title 58." Aircraft not required to be licensed by the Commonwealth, such as aircraft kits and wrecked aircraft, were subject to the Retail Sales and Use Tax, which has historically been imposed at a higher rate than the Aircraft Sales and Use Tax. Furthermore, once the aircraft became operational and needed to be licensed by the state, they became subject to the Aircraft Sales and Use Tax.

In order to end this perceived "double taxation" of aircraft kits and wrecked aircraft, House Bill 193 (*Acts of Assembly* 1984, Chapter 370) was enacted in the 1984 General Assembly session to remove the Aircraft Sales and Use Tax provision mandating that "[n]o tax shall be levied or collected under this chapter upon the sale or use of an aircraft for which no license is required." As Policy Development can find no documentation of any other motivation for this change, it believes that this statutory change was intended solely to end the "double taxation" of wrecked aircraft and aircraft kits, rather than to extend the tax to other situations where the aircraft was not subject to Virginia licensure, such as sales of aircraft to out-of-state purchasers. In its 1984 Legislative Impact Statement for House Bill 193, TAX stated "[t]he bill also removes the tax exemption from aircraft not required to be licensed and imposes the aircraft sales and use on wrecked aircraft and aircraft kits." (Emphasis added.) TAX also stated that the fiscal impact of this provision of the bill was limited to "wrecked aircraft and aircraft kits." The Legislative Impact Statement does not mention any broad policy change to the taxation of sales of aircraft to out-of-state purchasers.

#### Recodification

Additionally in 1984, as a result of the recodification of the Tax Code (*Acts of Assembly* 1984, Chapter 675), former *Va. Code* §§ 58-685.29 and 58-685.32 were combined to form one code section, current *Va. Code* § 58.1-1502, to consolidate the major

impositional provision of the tax. Although enacted in the same session as House Bill 193, which removed the requirement that the aircraft be subject to Department of Aviation licensure in order to be subject to the Aircraft Sales and Use Tax, the Code Commission amended *Va. Code* § 58.1-1502 to provide, in pertinent part, that:

There is hereby levied and imposed . . . 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 pursuant to § 5.1-5.

The Code Commission attributed the change to the same sentence in *Va. Code* § 58-685.32 that was removed by House Bill 193: “[n]o tax shall be levied or collected under this chapter upon the sale or use of an aircraft for which no license is required.” Given that the Code Commission’s recodification efforts took place over an extended period, it is likely that the movement of this text was planned well before House Bill 193 was introduced to stop the “double taxation” of aircraft kits and wrecked aircraft. The editor’s notes for *Va. Code* § 58.1-1502 reference former *Va. Code* § 9-77.11, which was recodified as *Va. Code* § 30-152 in 2001. Section 30-152 states “any statute purporting to . . . recodify any title of the Code of Virginia . . . shall be deemed to have been enacted prior to any other statute enacted at such session . . . amending . . . any portion of such title.” Therefore, the removal by House Bill 193 of the prohibition against the levy of the Aircraft Sales and Use Tax on aircraft not required to be licensed is considered to have been enacted after the 1984 recodification of the Tax Code. The editor’s notes *Va. Code* § 58.1-1502 state that “effect has been given in this section as set out above to Acts 1984, c.370” (House Bill 193).

Accordingly, I conclude that the changes to the licensure requirement in the Aircraft Sales and Use Tax resulting from the 1984 Session of the General Assembly are limited to wrecked aircraft, aircraft kits, and similar situations. The changes were not intended to change the taxation of sales of aircraft to out-of-state purchasers and other situations.

#### Conclusion

Policy Development plans to work with the Department of Aviation, the aviation industry and other interested parties to amend the Aircraft Sales and Use Tax regulation to provide clarification on TAX’s policy and to reflect legislative changes since the last time the regulation was revised in 1984. Until this regulatory action is completed, Appeals should rely on TAX’s policy as set forth in the July 24, 1985 memorandum and this memorandum.

C: William White