



Regional Sales And Use Tax Forum

Regional update on the Mid-Western United States.
by Christopher B. Younger

This column is the third installment in the fourth annual series of quarterly columns describing recent changes to aviation-related state sales and use tax issues (and where pertinent, other aviation related tax issues) in various regions of the United States.

This month we review any recent changes to state sales and use taxes in the states located in the mid-western region of the United States; namely Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia and Wisconsin.

Additionally, we will discuss whether or not each state has an exemption from its

sales and use tax for casual, isolated or occasional sales of aircraft. An exemption for casual, isolated or occasional sales of aircraft typically permits a buyer of a used aircraft to take delivery and/or use such aircraft in a state with such an exemption without paying that state's sales or use tax, provided that the specific conditions of the exemption are met.

Those conditions, which vary from state to state, typically require that either (or both) the seller and buyer not be habitually engaged in the sale of aircraft or, in some instances, of any tangible personal property, that the seller and buyer be affiliated business entities or, in the case of individual buyers and sellers, that they have a certain family relationship with one another.

ILLINOIS

Illinois has a state sales tax (referred to in Illinois as "Retailers Occupation Tax") and use tax imposed at a rate of 6.25%, plus potential additional local taxes which can amount to a combined total sales/use tax of up to 9.25% of the purchase price or value of an aircraft. Sales of aircraft are specifically excluded from the Illinois exemption for occasional sales of tangible personal property.

INDIANA

Indiana has a state sales and use tax imposed at a rate of 7%. Sales of aircraft are specifically excluded from the Illinois exemption for occasional sales of tangible personal property.

IOWA

Iowa has a sales and use tax imposed at a rate of 6% with an additional optional local sales tax imposed at a rate of 1-2%. Aircraft subject to registration in Iowa are typically subject to Iowa use tax rather than Iowa sales tax. Sales of aircraft are specifically excluded from the Iowa exemption for occasional sales of tangible personal property.

KANSAS

Kansas has a state sales and use tax imposed at a rate of 6.3%. In addition, Kansas counties, localities and transportation development districts may generally impose additional sales and use taxes at rates of up to 5%.

Isolated or occasional sales of aircraft are exempt from Kansas' sales tax. An "isolated or occasional sale" is defined as the non-recurring sale of aircraft by a person not engaged in the business of selling aircraft at the time of the sale.

MICHIGAN

Michigan has a state sales and use tax imposed at a rate of 6%. Sales of aircraft are specifically excluded from the Michigan exemption for occasional sales of tangible personal property. However, the exemption may apply to the sale or transfer of an aircraft pursuant to certain corporate reorganizations or by an individual to the spouse, mother, father, brother, sister or child of such individual and when the transfer is a gift to a beneficiary in the administration of an estate.

MINNESOTA

Minnesota imposes sales and use tax at a rate of 6.875% with additional local sales and use taxes of up to 1%. Sales of aircraft are specifically excluded from the Minnesota exemption for occasional sales of tangible personal property except in very narrowly defined corporate reorganizations.

MISSOURI

Missouri imposes a state-wide sales and use tax at a rate of 4.225% plus local county/city sales tax at rates up to 6.625%.

Isolated or occasional sales of aircraft by persons that are not ordinarily and regularly engaged in making repeated, successive sales and other transfers are exempt from Missouri sales tax if the total amount of the gross receipts from all such sales is less than \$3,000 in a calendar year. Sales of aircraft made in the partial or complete liquidation of a household, farm, or non-business enterprise are not included in the \$3,000 threshold, nor are transfers pursuant to certain narrowly defined corporate reorganizations.

NEBRASKA

Nebraska imposes a statewide sales/use tax at a rate of 5.5% plus local sales/use tax at rates up to 1.5%. Sales of aircraft that qualify as an occasional sale are exempt from Nebraska sales and use tax.

An occasional sale does not include a sale at auction, a sale (other than certain inter-company sales) in which the seller did not pay the sales or use tax, the sale of inventory purchased for resale or lease or the sale (other than certain inter-company sales) of new property. An occasional sale includes inter-company sales of new or used property in connection with certain mergers, distributions and contributions.

NORTH DAKOTA

Under North Dakota law, aircraft are exempt from the state's sales and use tax, but are subject to an aircraft excise tax imposed at the rate of 5%. If the aircraft is purchased for lease or rental, the excise tax may be imposed on the lease or rental cost of the aircraft.

Aircraft transferred pursuant to certain corporate reorganizations, by one joint owner to another without monetary consideration or by gift, inheritance, or devise between husband and wife, parent and child, or brother and sister are exempt from the North Dakota aircraft excise tax.

OHIO

Ohio imposes a statewide sales tax at a rate of 5.5% plus local county/city/transit authority sales taxes imposed at combined rates of up to 3%. Ohio exempts casual sales of aircraft from its sales and use tax.

A "casual sale" is defined as a sale of an aircraft that was obtained by the person making the sale, through purchase or otherwise, for the person's own use and was previously subject to any state's taxing jurisdiction on its sale or use.



OKLAHOMA

Oklahoma imposes a statewide excise tax in lieu of sales tax on the purchase price or market value of aircraft registered in Oklahoma at a rate of 3.25%. Oklahoma has no exemption for casual, isolated or occasional sales of aircraft.

SOUTH DAKOTA

South Dakota imposes a statewide registration excise tax in lieu of sales tax on the purchase price or market value of aircraft registered in South Dakota at a rate of 4%, in addition to an aircraft registration fees that can vary depending on the type of aircraft being registered and its MTOW.

When an aircraft is owned by a resident of South Dakota who has paid original registration excise tax upon the aircraft purchase price, future purchasers of the aircraft will not be assessed sales/use/original registration excise tax on subsequent sales of the aircraft but will be liable for payment of aircraft registration fees.

WEST VIRGINIA

West Virginia imposes a statewide sales/use tax at a rate of 6%. A sale of an aircraft in an isolated transaction is exempt from West Virginia sales and use tax. The seller must not normally be in the business of selling tangible personal property or services.

An isolated transaction is a transaction in which an aircraft is sold, transferred, offered for sale, or delivered by the owner who is not in the business of selling aircraft and makes no more than four such sales in a year.

WISCONSIN

Wisconsin imposes a statewide sales tax at the rate of 5% plus local county/city sales tax at rates between 0.1% and 0.6%. Sales of

aircraft are specifically excluded from the Wisconsin exemption for occasional sales of tangible personal property. However, the exemption may apply to the sale or transfer of an aircraft pursuant to certain corporate reorganizations or inter-family transfers.

In concluding this month's Regional Sales & Use Tax Forum, you are advised to keep in mind that the above article serves as a general and broad overview of state sales and use tax laws and does not constitute legal advice or a legal opinion. Therefore, it is always advisable to consult with qualified aviation counsel when considering any questions regarding the application of sales and use tax in a particular situation or to a particular transaction.

In the July 2012 issue of *World Aircraft Sales Magazine*, we will take a state-by-state look at the Western United States, which we previously reviewed in the July 2011 issue.

› Christopher B. Younger is a member of the Business Aircraft Group at GKG Law, P.C. He is a tax and FAA specialist concentrating in the areas of corporate aircraft transactions and aviation taxation.



› Mr. Younger can be reached at the firm's Washington, DC office, 1054 31st Street, NW, Suite 200, Washington, DC 20007, telephone: (202) 342-5295, facsimile: (202) 342-5203, e-mail: cyounger@gkglaw.com.

Do you have any questions or opinions on the above topic? Get them answered/published in *World Aircraft Sales Magazine*. Email feedback to: editorial@avbuyer.com ■