

GKG LAW, P.C.
ATTORNEYS AT LAW

* * * **LEGISLATIVE ALERT** * * *

NEW YORK SALES AND USE TAX REFORM

By Troy A. Rolf, Esq.
GKG Law, P.C.

Earlier this year, the General Assembly of the State of New York passed, and Governor Andrew Cuomo signed, sweeping tax reforms that contain good news for general aviation aircraft owners and operators. Under the legislation, general aviation aircraft (defined as any aircraft used in civil aviation that is not a commercial aircraft) will be exempt from sales and use taxes in the State of New York effective as of September 1, 2015. The legislation however, did not contain very many specifics about how the law would be applied under some fact patterns. On July 24 of this year, the New York Department of Taxation and Finance issued Technical Memorandum TSB-M-15(3)S providing details concerning how the Department of Taxation and Finance interprets and will apply the legislation.

The Technical Memorandum makes clear that the exemption provided in the new legislation is in addition to the existing exemption for commercial aircraft under Sections 1101(b)(17) and 1115(a)(21) of the New York Tax Law, and that the exemption does not apply to military aircraft or unmanned aerial vehicles or drones

The Technical Memorandum further clarifies that the legislation will benefit not only taxpayers who purchase aircraft on or after September 1, but also taxpayers who (a) contracted to purchase a new aircraft prior to September 1, 2015, but who do not take actual delivery of the aircraft until on or after September 1, 2015, and (b) currently own aircraft that are based in New York and operated under a leasing structure where the lease is not subject to accelerated tax payments under Section 1111(i) of the New York Tax Law. With respect to the latter, Section 1111(i) of the New York Tax Law provides that if the term of any lease, including any options to renew or similar contractual provision, is for a period of one year or longer, sales tax on all lease payments that are or will become due under such lease must be paid on the due date of the first lease payment under such lease. Owners of aircraft that are subject to a lease that was entered into prior to September 1, 2015, and that are not subject to accelerated tax payments under Section 1111(i) will be responsible for tax payments on any lease payment that was due prior to September 1, but lease payments due on or after September 1 will be exempt. Unfortunately, owners of aircraft that are subject to a lease that was entered into prior to September 1, 2015 that are subject to accelerated tax payments under Section 1111(i) of the New York Tax Law will not benefit from the change in the law with respect to that lease.

The Technical Memorandum makes clear that the exemption provided in the new legislation applies to (i) the aircraft itself, (ii) other property affixed to the aircraft at the time of sale, such as furniture, fixtures, built-in appliances, window coverings, climate control systems, entertainment systems, avionics, radios, weather radar systems and navigation and emergency lighting, and (iii) machinery or equipment that is installed on the aircraft subsequent to its purchase and that is necessary for the aircraft's equipping or its normal operation. The exemption does not, however, apply to accessories such as paintings or other artwork, tableware, glassware, cookware, small appliances, linens, pillows, towels or other ancillary property. Amounts added to the purchase price for such non-exempt items should be invoiced separately from the aircraft itself.

If you have an aircraft that is either based in New York under a leasing structure or a Part 135 structure, or if you base your aircraft out of state and would like to either relocate your aircraft to New York or simply land in New York from time to time, please contact the Business Aviation Attorneys at GKG Law, P.C., to discuss how this new legislation may benefit you.

* * *

Troy A. Rolf is a business aviation and tax attorney concentrating in the areas of business aircraft transactions and operations in the law firm of GKG Law, P.C. The firm's business aircraft practice group provides full-service tax and regulatory planning and counseling services to corporate aircraft owners, operators and managers. The group's services include Section 1031 tax-free exchanges, federal tax and regulatory planning, state sales and use tax planning, and negotiation and preparation of all manner of transactional documents commonly used in the business aviation industry, including aircraft purchase agreements, leases, joint-ownership and joint-use agreements, management and charter agreements, and fractional program documents. Troy manages the firm's Minnesota office, at 700 Twelve Oaks Center Drive, Suite 700, Wayzata, MN, 55391, telephone: (952) 449-8817, facsimile (952) 449-0614, e-mail: trolf@gkglaw.com.