Planning to Minimize or Avoid Sales Tax on Aircraft Purchases

-By Keith G. Swirsky-

Lately, I have been copied by various clients and industry professionals on glossy promotional advertising, proclaiming that the advertiser can help completely avoid sales tax on aircraft purchase transactions. Some of this advertising has targeted a specific state, such as California or Florida. The advertisements suggest that an aircraft can be purchased with all sales tax being avoided, and some go so far as to suggest that all of the professional fees paid by the aircraft owner will be reimbursed one hundred percent (100%) if the planning doesn't work.

The lawyers in the business aviation practice group at GKG Law, P.C. (formerly Galland, Kharasch, Greenburg, Fellman & Swirsky, P.C.) have supported the business aviation industry for many years, and frequently provide substantive information at educational forums held by the industry trade associations and other groups. Our lawyers have contributed many articles to World Aircraft Sales and other industry publications on aviation tax planning issues. Frequently our advice has covered state sales and use tax, federal tax and federal aviation regulatory matters, as well as aircraft acquisition and operations planning issues at every level. On the point of sales taxation, the attorneys at GKG Law are well versed in advising on sales and use tax matters in virtually every jurisdiction in the United States, not just states like California and Florida.

There is no question that the sales tax laws are varied and complex. So much so that some might suggest that the best course of action is to obtain sales tax advice from someone who provides only sales tax services, and then only in a single state. However, that is absolutely not the case.

Planning for an aircraft acquisition and operations requires more of a melting pot approach- not just sales and use taxes. It is our fundamental belief that sales tax planning cannot be accomplished in a void, but rather must be fully integrated with federal tax planning, federal aviation regulatory planning and liability protection planning. Further, economic/accounting and cash flow objectives, differing shareholders or partners "involvement" in the cost of the aircraft tax benefits, liability protection planning considerations, 1031 exchanges, tolerance for risk, and other matters all bear on the sales and use tax and other planning. And, of course, an aircraft can be used in multiple jurisdictions, potentially necessitating a "belt and suspenders approach" to avoid or minimize taxation in two states rather than just one.

Our “melting pot” characterization is truly an understatement. In all cases, each owner’s concerns and circumstances vary. A fully integrated, comprehensive tax and regulatory planning process usually involves weighing the costs and benefits of various alternative aircraft ownership and operating structures. Not surprisingly, one possible structure might produce the best possible sales tax planning result but cause problems from an FAA regulatory or liability protection planning perspective, while yet another structure might be designed to accomplish a tax-free exchange but be completely inconsistent with optimal sales tax planning.

What aircraft owners should want and get are advisors who are capable of not only handling all of these planning areas, but also the purchase and sale documentation, business advice on market terms of a loan or professional management services and documentation associated with both, and the capability to provide a coordinated team approach with the aircraft broker, the owner’s accountant, and others to ensure that the issues are dealt with comprehensively.

The lawyers at GKG Law are highly experienced business aviation attorneys, most of whom possess master’s degrees in taxation in addition to their law degrees. Additionally, GKG Law charges for its services on the basis of an hourly rate and will offer a flat fee for all tax planning geared to the hourly rate. The flat fee bears no relation to the magnitude of the purchase in contrast to other providers of sales tax services who look at the size of the deal and adjust their fee [upward] accordingly.

We have attached two substantive sales and use tax articles, one published in the July 2007 edition of the World Aircraft Sales Magazine, addressing sales and use taxation. Upon request, our office will also provide recent articles and/or PowerPoint presentations on sales and use taxation, federal tax or generally, acquisition planning.

In the future please consider GKG Law for sales tax planning advice and advice on a planning a fully integrated aircraft acquisition, ownership and operating structure to address all of your planning needs.

******

Keith G. Swirsky is a tax specialist concentrating in the areas of corporate aircraft transactions and aviation taxation. The firm’s business aircraft practice group, chaired by Mr. Swirsky, 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. Mr. Swirsky can be reached at the firm’s Washington, DC office, 1054 31st Street, NW, Suite 200, Washington, DC 20007, Telephone: (202)342-5251, Facsimile: (202)965-5725, E-mail: kswirsky@gkglaw.com.