

TAX MATTERS

A newsletter dedicated to informing California Aircraft and Vessel owners about taxes

Prepared and distributed by Aero & Marine Tax Professionals

The Dealer License Myth.

Many times taxpayers call me when they receive a notice from the Board of Equalization (BOE); often they feel that they have been unfairly singled out. Many times they open the conversation with, "I have a dealer's license. I don't have to pay tax."

Unfortunately, I have to be the one to break the bad news. They have fallen prey to one of the most insidious lies that resides in the aircraft industry. Worse, this lie permeates into many California businesses that don't own aircraft.

If you or anyone you know is operating based on this belief, have them call our office today. This is one of the areas that always rank high on the BOE's list of "most common mistakes."

If a taxpayer purchases an aircraft for resale, he is not allowed to make any use of the aircraft unless he can support through documentation the use was for demonstration and dis-

play. Additionally, before you decide to fly your aircraft for 500 hours a year and claim all the flights are for demonstration and display, be aware that the burden of proof is on the taxpayer. The use that is claimed for demonstration and display must pass what I call the "laugh test."

Try describing your actual use of the aircraft to any of the following. If your financial advisor rolls his eyes, your attorney falls face down in his soup, or the tax auditor starts laughing so hard that tears roll down from his eyes, then it does not pass the laugh test.

If you intend to claim the property was purchased for retail you better have:

1. Copies of ongoing advertising that promote your specific aircraft for sale.
2. Name, address, and phone number for every person who was on a flight that you are claiming was for demonstration and display.
3. Accurate flight logs for the specific aircraft.
4. Fuel receipts that support each flight.

The following are summaries from some annotations that establish the BOE's position regarding sale for resale:

210.0019 Aircraft. The use of an aircraft by an aircraft dealer to transport executives and other people, when these people are not potential purchasers, is not a use for demonstration and display under Regulation 1669. Such use is subject to tax as set forth in Regulation 1669(f)(1)(C). 6/29/71.

210.0580 Transportation of Executives Or Engineering Tests. Aircraft to transport executives and other people on one-way trips, such people not being potential purchasers, or use of aircraft extensively for engineering tests, do not constitute "demonstration or display" and are taxable uses. 1/12/55. The

BOE does allow certain flights that are not for demonstration and display.

210.0020 Aircraft. An airplane held for sale which is flown around the country to develop interest and which is used by the taxpayer to keep it in condition and to instruct himself in its proper use, held not subject to use tax. 8/10/65.

However, this is not a license to steal. The burden of proof is on the taxpayer. That means documentation must be provided to support the flights were for the purpose of demonstrating it for sale. Don't misconstrue the "instruct" part as the right to use the aircraft to get trained how to fly regardless of how long it takes.

PLEASE REFER BACK TO THE LAUGH TEST!

In certain cases the taxpayer can charge for demonstration and display flights.

210.0060 Charge for Demonstration. If an aircraft is used solely for demonstration or display purposes while being held for sale, the dealer will not incur liability for use tax simply because he makes a charge to the prospective customer to whom the plane is demonstrated but who fails to purchase the plane, provided the charge is no more than the actual expense incurred in the demonstration. Notwithstanding the making of the charge, it does not appear that the law requires application of the tax if no actual use of the article other than demonstration while being held for sale is made. 6/21/57.

In Plain English, the minute you make use of property that you are claiming is in your inventory for sale, the property immediately becomes subject to use tax on the purchase price. This applies to any property, not just aircraft.

DON'T LET IT HAPPEN TO YOU.

If you have the slightest discomfort about your tax status for purchases you have made any time in the last ten years, I will offer a free analysis of your situation. Go to www.aeromarinetaxpros.com and fill in the appropriate form. Or, call me personally at 916-691-9192.

Don't hesitate to protect yourself.