

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-78(12)S
Sales Tax
September 25, 1978

This Memorandum Supersedes TSB-M-78(12)S Dated June 29, 1978
Which Should Be Destroyed

Corporate Aircraft

The following is the policy of the State Tax Commission in regard to the imposition of sales and compensating use tax on corporate aircraft:

It is the law of the State of New York that corporate aircraft which are based in the State of New York are subject to the New York State sales and compensating use tax. The State Tax Commission holds, however, that corporate aircraft which are delivered and based outside New York State and which enter this State only for limited trips such as described below are not subject to the compensating use tax. Should such aircraft be relocated within the State of New York, they would become subject to the compensating use tax.

In such event, if sales tax has been paid outside of New York State on a particular aircraft, when that aircraft is relocated within the State of New York that sum may be credited against the amount due to the State of New York. For example if four percent tax was paid elsewhere on the sale price of the aircraft and the amount due in New York was six percent, the two percent difference would be due. Conversely, if seven percent was paid outside New York, the New York obligation would be met.

Simply put, our policy on sales and use tax as it relates to private aircraft is that we require a one time payment of this tax at the prevailing sales tax rate of the locality within the State at which the plane is based (ranging from four percent to eight percent within the State).

Typical situations where no tax would apply to an aircraft based outside New York State and entering this State for limited trips are as follows:

1. Its sole use in the State involves landing at a New York State destination at the termination of an interstate flight, with no flights between points in New York State;
2. It flies from point A (outside New York State) to point B (in New York State) and continues on to point C (also in New York State), as part of an overall, continuous, interstate flight plan. Similarly, a reversal of this flight, which terminates outside New York State after one stop in New York, would also be considered an interstate flight;
3. It enters New York State solely for a non-business use such as pilot training, routine maintenance or warranty work. Similarly, an intrastate flight with only crew members on board, for the purpose of routine maintenance or warranty work, which interrupts either of the situations outlined in (1) or (2) above would not be considered a taxable use;

4. Landing of an aircraft within New York State due to an emergency equipment repair or weather conditions.

However, the charges for all repair and maintenance services performed on the plane in New York State, as well as charges for fuel and other tangible personal property furnished, are subject to appropriate sales tax unless the vendor delivers the repaired aircraft to a point outside the State.

This approach would follow the practice of other states. Leading cases in this area which approve taxation by the state in which the aircraft is based are:

Sundstrand Corporation v. Department of Revenue,
339 NE 2d 351 (App Ct of Ill, 1975).

Vector Company, Inc. v. Benson,
491 SW 2d 612 (Sup Ct Tenn, 1973).

Onan Corporation v. Commissioner of Taxation,
(Minn Tax Ct of Appeals 3/30/77).

Woods Corporation,
531 P 2d 1381 (Sup Ct Okla, 1975).