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There has been considerable fear and loathing among aviators who want to bring their new planes into the State of Florida within six months of purchase. Non-resident owners have cancelled vacation plans, rerouted flights and worried that even an emergency landing or fuel stop will come with a crushing tax bill! Not surprisingly, this lack of traffic has translated into a lack of revenue (including the associated tax), coming into Florida. Here's to the law of unintended consequences...

Under current Florida and constitutional law, however, AND the DOR's own publications and correspondence (see the related document posted here at www.goodattorneysatlaw.com), non-resident purchasers with no physical or business connection to Florida who bought their plane outside of Florida CAN legally enter Florida on the very day of purchase without being liable for use tax. The analysis changes if the aircraft is brought here for "training, repair, customization or business", however, other exemptions and planning opportunities may apply in those cases. Put simply, getting out of the plane to stretch your legs, play on the beach, or frustrate yourself on the golf course does not legally subject you to use tax on your plane if you fit the profile above.

There are three problems with this analysis: (1) many aircraft owners don't know about these distinctions, (2) the Department of Revenue may not either, and/or (3) it may not care. The bottom line is that revenue-hungry states (and Florida is one of them, along with fellow bubble-pop states like California, Nevada, Arizona and others) see a big-ticket item where we see the gift of flight. Florida, like many, are leaning toward a "tax first, justify later" policy (if you like horror films, be sure to check out Indiana and Maine for some of the more extreme examples).

The good news is that the Florida Legislature took up and sought to clarify the distinctions between taxable and non-taxable activity in House Bill HB1379 and Senate Bill S2856. These proposed revisions to Fl. Stat. 212.08(7)(ggg) provide, in largely the same terms, that aircraft brought into Florida for less than a "total" of 21 days out of the six-month period following purchase will not be subject to use tax absent other taxable activity. The legislature's use of the word "total" suggests that any old 21 days will do, they probably do not have to be consecutive days. The House Bill contains an additional provision exempting aircraft that enter or remain in Florida for "flight training, repairs, alterations, refitting or modification".

The bad news is that both bills are dead. The Senate Bill died in the Finance and Tax Committee on May 2nd. The House Bill Died in Messages on Monday, May 5th. At the time of this writing we are unaware of any subsequent news and have a call into the Department of Revenue. Also, even assuming this legislation is

resurrected in similar form, the amendment would presumably retain the language placing the burden on the visitor to prove that he or she was NOT in Florida for more than the prescribed period. Be sure the records you now have to carry around don't throw off your weight and balance.

So where does that leave us? For now, with the law that has been in force in Florida for years, which by comparison has not unduly burdensome to aircraft owners. We are also stuck with the DOR's current policy, however, which might be. Notwithstanding the saber-rattling, non-resident aircraft owners with no personal, property or business connection to Florida, who did not purchase their planes in Florida, and who do not expect to be in Florida for a period of greater than 21 days are probably OK, and all but the most-risk averse should probably keep those weekend reservations in the Keys. Obviously, the closer your connection to the State, the more the State might be able (or willing) to assert some claim to use tax.

There are a number of planning opportunities and strategies that can minimize your risk of unreasonable and illegal taxation by the DOR. Periodic visitors to the state should also consider suppressing their aircraft's N-Number, so this data is not so readily available to "plane spotters" looking for prey. Contact a skilled aviation tax attorney for guidance in this area.

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