New Virginia Aircraft Sales and Use Tax Exemptions

03.25.2011

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The Commonwealth of Virginia has enacted new legislation that creates an exemption from its aircraft sales and use tax aimed at encouraging aviation-related businesses to relocate their headquarters, aircraft and jobs to Virginia. The new legislation also includes a "fly-away" exemption which allows non-residents to purchase aircraft in Virginia without being subject to Virginia sales tax.

Background

Virginia imposes a 2% tax on the retail sale of an aircraft sold in the Commonwealth or upon the monthly gross receipts from the use, including lease or charter, of an aircraft in Virginia. The sales tax is required to be paid by the time an aircraft is licensed with the Virginia Department of Aviation, and it is a costly expense for businesses that maintain or relocate their aircraft fleets in Virginia. For example, relocating a $40 million aircraft to Virginia has meant a 2% or $800,000 tax.

The aircraft sales and use tax, if applicable, is a major cost in an aircraft acquisition. Without an interstate or "fly-away" exemption in Virginia (not even for non-resident purchasers who intend to register the aircraft in another state), the general practice has been to fly the aircraft out of Virginia to a more sales-tax friendly state for the closing and delivery in order to avoid sales tax on the acquisition in Virginia. The movement of aircraft out of Virginia creates additional transaction costs for the parties.

Virginia's neighboring states exempt aircraft from their sales and use tax or apply a nominal tax, provide fly-away exemptions, or provide other tax incentives to attract aviation-related businesses and the related investment in infrastructure and payroll. Relative to neighboring states, Virginia has not been considered a tax-favorable jurisdiction in which to locate an aviation-related business or conduct aircraft acquisition transactions.

New Exemptions

On March 24, 2011, the Governor signed into law two new exemptions from the aircraft sales and use tax that are intended to attract aviation-related businesses to Virginia. Beginning July 1, 2011 and ending December 31, 2014, any aircraft purchased or used in Virginia by a "qualified company" would be exempt from the aircraft sales and use tax. A qualified company that is exempt from the aircraft sales and use tax is one that:

- Is an aviation-related company headquartered in Virginia;
- Between January 1, 2010 and December 31, 2014, makes a new capital investment of at least $4 million in aviation-related real estate and real estate improvements in Virginia on publicly-owned and public-use airports;
- Between January 1, 2010 and December 31, 2014, creates at least 50 new jobs in Virginia that pay at least 150% of the prevailing average wage in the locality in which the jobs are located;
- Owns or uses aircraft that are used primarily for intrastate, interstate, or foreign commerce; and
- Has entered into a memorandum of understanding with the Virginia Economic Development Partnership, after consultation with the Virginia Department of Aviation, on or before December 31, 2014, that details the company's planned investment and activities in Virginia.

With the new "fly-away exemption", Virginia will join a short list of states that exempt from sales tax an aircraft that is sold and delivered to a non-resident in the state and removed to another state within a specified period of time. The exemption is available in Virginia as long as the aircraft is removed within 60 days of closing on the purchase. Documentation of removal, within the 60-day period, would be necessary.

For further information, please contact any member of the Williams Mullen State and Local Tax Team, the Aviation Practice Group, or the Government Relations Practice Group.

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