

Exemptions For Commercial Aircraft

The following amendments to the Tax Law (Chapter 773 of the Laws of 1978, effective March 1, 1979) provide exemption from sales and use tax for commercial aircraft used in intrastate, interstate or foreign commerce, as well as services to the aircraft (maintenance and repairs), machinery and equipment installed on the aircraft, initial installations of the aircraft, refurbishing of aircraft already in commercial use and flight simulators purchased by commercial airlines:

- 1) Section 1105(c)(3) provides an exemption for "... services rendered with respect to commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs..."
- 2) Section 1115(a), Paragraph 21 exempts "Commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines."

The definitions cited below, although provided in the Sales Tax Regulations dealing with commercial vessels, are also applicable with respect to commercial aircraft.

- 1) Section 528.9(a)(4) defines the term "primarily" as "...at least seventy-five percent of the receipts from the vessel's activities are derived from interstate or foreign commerce."
- 2) Section 528.9(a)(5) defines "engaged in interstate or foreign commerce" as "...the transportation of persons or property for compensation between states or countries."

Accordingly, the use of commercial aircraft which produces at least 75% of total income from the activity of transporting persons or property for compensation within New York State or between states or countries, qualifies the aircraft for the sales and use tax exemption. However, a company which purchases an aircraft for transporting its executives, employees or customers and does not engage in transporting persons or property in intrastate, interstate or foreign commerce for compensation is not entitled to this exemption on the purchase of its aircraft.

Although the term "commercial aircraft" has not been defined in the Tax Law, Sales Tax Regulation 528.10(b) defines an airline to include an air taxi operator, described as follows:

"...classified by the Civil Aeronautics Board as a 'commuter air carrier' or who (a) performs at least five round trips per week between two or more points and publishes flight schedules which specify the times and days of the week and places between which such flights are performed or (b) transports mail by air pursuant to contract with the United States Postal Service."

Consequently, aircraft used by an "airline" as defined above, would constitute "commercial aircraft" qualifying for sales tax exemption. In addition, aircraft purchased by air taxi operators and commercial operators of small aircraft holding Air Taxi Certificates issued by the Federal

Aviation Agency, although not qualified for "airline" status, will qualify as commercial aircraft for purposes of sales tax exemption.

All purchasers of commercial aircraft must render a properly completed form ST-121, Exempt Use Certificate, to their suppliers, in order to be eligible for exemption from the sales and use tax.

The following list contains examples of purchases for qualifying exempt commercial aircraft and their taxable status, designated by "E" for exempt and "T" for taxable:

Purchases for Qualifying Exempt Commercial Aircraft

Aircraft for use in transporting persons or property for compensation primarily engaged in intrastate, interstate or foreign commerce.	E
Parts and accessories.	E
Helicopters used primarily to transport persons for compensation intrastate, interstate or foreign commerce.	E
Equipment and machinery purchased or rented for use in the maintenance of qualifying exempt commercial aircraft.	E
Maintenance and line services.	E
Fuel, fueling and defueling, oil, grease and other supplies.	E
De-icing.	E
Initial installation of equipment or accessories on aircraft.	E
Refurbishing interior of aircraft.	E
Food or drink sold to airlines for in-flight consumption.	E
Repairs (labor and parts).	E
Flight simulators for airlines.	E
Jet air start charge.	E
Baggage train charge - transport baggage between aircraft or terminal.	E
Baggage conveyer charge - transport baggage between aircraft or baggage train.	E

Baggage handling charge.	E
Aircraft cleaning charge.	E
Engine generator charge	E
Engine preheat charge - preheat aircraft engines, prior to start of engines.	E
Generator charge - to provide electrical service while aircraft is shut down.	E
Fresh water charge for the service of placing fresh water on aircraft.	E
Lavatory service truck charge - used to remove refuse from aircraft, but not from airport holding tanks.	E
Power stairs charge - used by passengers and crew to board and leave aircraft.	T
Garbage disposal charge - to remove garbage from aircraft, but not trash removal from terminals or dumpsters.	E
Tickets, labels, tags.	T
Time tables and schedules.	T
Forms and stationery.	T
In-flight paper supplies.	T
Uniforms.	T
Manuals, guides and advertising materials.	T
Air cargo containers, permanent.	E
Igloos, permanent	E
Repairs to air cargo containers and igloos	E