

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

TSB-M-78 (19)S
Sales Tax
October 23, 1978
See also TSB-M-78(12)S

Use of Aircraft Within New York State

The policy of the State Tax Commission which deals with the imposition of New York State sales and compensating use tax on corporate aircraft is outlined in TSB-M-78(12)S dated September 25, 1978.

The following is a letter written by Commissioner Tully, specifying the sales and use tax treatment of two additional transactions not covered by the examples given in TSB-M-78(12)S:

This is with respect to your letter _____ in which you asked our opinion concerning the application of sales and use tax to two examples of aircraft operation within the State of New York. Your letter was in reply to my letter _____ in which I had stated that certain limited uses of aircraft within the State of New York would not subject that aircraft to the sales tax.

Example No. 1 stated in your letter is:

"(1) _____ Company maintains a demo aircraft at their factory _____. That aircraft enters New York State for the purpose of sales demonstration flights to New York based corporations and individuals. Let's say it stays for several weeks and makes multiple flights for various prospects within the state. Then the aircraft returns _____ or goes elsewhere for additional demonstrations. Let's assume it does this a half dozen times per year. Does your tax apply to this demo aircraft?"

The Department has had a policy that where an aircraft held for resale is used only for free demonstration to prospective customers, no tax is payable on the use of such aircraft for demonstration. This policy has been in effect since January 25, 1968 pursuant to a published opinion of former Counsel, Edward H. Best. This opinion was published in New York State Tax Bulletin 1968-1, at page 61. A copy of this opinion is enclosed for your convenience. The policy set forth by Mr. Best is the present policy, unchanged. Therefore, the response to your question is, if there is no use within the State other than for demonstration purposes of an aircraft held for sale, sales and use tax is not due, except for any tax which is required to be collected upon the sale of the aircraft.

Your Example No. 2 is as follows:

"(2) _____ Company headquartered in _____ frequently flies to New York for business concerning their financial and stock matters. The aircraft may be in New York for several days to two weeks at a time, and may conduct flights within the state while temporarily in New York. The _____ Company does not have a division, subsidiary or other offices in the state. The trips to New York are clearly to meet with New York based companies. The airplane is clearly based in _____ but it does have frequent trips to New York. Does your tax apply?"

It is my opinion that the use of the aircraft as explained in Example No. 2 is not subject to tax, provided Company is not a "resident" within the meaning of the Tax Law.

Section 1118 of the Tax Law, which lists exemptions from the compensating use tax, states:

"The following uses of property shall not be subject to the compensating use tax imposed under this article:

* * *

"(2) In respect to the use of property purchased by the user while a nonresident of this state . . . A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, shall not be deemed a nonresident with respect to the use in this state of property in such employment, trade, business or profession."

* * *

If the only type of business the company does in New York is that concerning its financial and stock matters, it does not lose its status as a nonresident for the purposes of use tax exemption. Under such circumstances, this company would not be required to pay a use tax on the aircraft.

Sincerely,

JAMES H. TULLY, JR.
Commissioner