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ATTORNEYS AT LAW

Aircraft Purchases in Virginia

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WOODS ROGERS PLC

Aviation Law Update

I. Introduction

Most aircraft owners, both real and imagined, have some knowledge of Federal Aviation Administration (“FAA”) requirements. While it is critical to comply with FAA rules and regulations, many owners are not as familiar with the Commonwealth of Virginia’s requirements. This is a potentially risky situation because owners often rely on hired experts to handle aircraft transactions which are much more likely to be based in Oklahoma than Virginia. This is not to say that hiring experts is unwise. Aircraft sellers and especially buyers are often well served by working with experts such as an escrow agent, a broker, and an aircraft manager. Aircraft managers may offer services such as assisting in obtaining RVSM Certificates and FCC radio station licenses. Brokers, of course, may find a buyer for a seller or an aircraft for a buyer, but they may also assist with coordinating and determining the scope of the aircraft inspection. Escrow agents may provide such services as filing bills of sale and other documents with the FAA and obtaining registrations on the International Registry. All of this can help the deal go smoothly. But for Virginia buyers and sellers it is also important to have an expert involved who knows Virginia aviation law. The following is a brief discussion of a few items that any Virginia buyer or seller should know.

II. Licensing

Any Virginia resident who owns an aircraft must obtain a license from the Commonwealth. But the licensing requirement is not limited to Virginia residents. Any non-resident who owns an aircraft that is based in Virginia for more than sixty days during any twelve-month period must also obtain a license. If an owner fails to obtain a license when required, then he or she may be found guilty of a misdemeanor which can carry jail time as well as fines. While this is hardly the crime of the century, you would not want to find yourself before a judge trying to explain why you should not spend time in jail because you were unfamiliar with Virginia law.

While there is a small application fee for the license, Virginia has also linked the license to its sales and use tax. If a buyer does not pay the sales and use tax or, alternatively, can not convince Virginia that he or she is exempt from the tax, then Virginia will not issue a license.

III. Sales and Use Tax

Most states impose a sales and use tax on aircraft purchases, and Virginia is no exception. Sales and use tax issues are complex and should be considered early in the process with the benefit of professional advice. Otherwise, the parties may find themselves with a large and

unplanned cost that must be paid. Purchasers of aircraft in Virginia must file a return with the Virginia Department of Taxation and pay the tax prior to filing for a license with the Department of Aviation. Structuring the purchase of the aircraft while considering sales tax should be one of the first considerations in the timeline of ownership and registration.

The aircraft sales and use tax can be deceptive in a couple of regards. At first glance, and in some straight forward situations, the sales tax is a simple concept: the purchaser pays a 2% tax on the sales price of an aircraft purchased within Virginia. The first pitfall many purchasers come across is when the aircraft has been purchased in another state yet brought into Virginia with the intention of licensing it here. This transaction triggers the use tax. The computation of that tax depends on the fair market value of the aircraft at the time of licensing it in Virginia. Thus, the purchaser may want to consider the issue of timing the introduction of the aircraft into Virginia.

A more important point to consider for the purchaser is what form the “sale” may take. Leasing transactions may very well fall under the definition of “sale” for purposes of the tax. Conversely, what would qualify as a sale under a common definition may not trigger the sales and use tax under Virginia’s definition. A key example would be the sale to a carefully drafted trust. Another example is a sale as part of a going business. In both situations, like all others, the detail of the transaction is crucial.

The penalty for noncompliance is strict: six percent of the tax due for each month, not to exceed thirty percent of the tax, as well as interest at a rate 2 percent higher than the IRS underpayment rate. With proper planning, however, a purchaser should rest assured in his or her compliance.

IV. Conclusion

In this brief space, of course, not all Virginia aviation law is discussed, but it is critical to realize that ownership of an aircraft requires

compliance with both federal and state law. Buyers, sellers, lessors and lessees who are Virginia residents, base their aircraft in Virginia or otherwise fall within Virginia law should be aware of the state’s requirements for aircraft and their owners.



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