CONTRIBUTED CONTENT & PRESENTATIONS

Sale of Fractional Aircraft Shares Not Taxable Under New York Law

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New York's Department of Taxation and Finance recently released an Advisory Opinion concluding that the sale of fractional aircraft shares are not taxable under state law. New York tax law imposes sales and use tax on retail sales of personal property and the sale of certain services. Specifically, a "sale" includes any "transfer of title or possession or both" for "transactions in which there is a transfer for a consideration of possession of tangible personal property without a transfer of title to the property."

The Department of Taxation and Finance concluded that the sale of a fractional share of an aircraft did not constitute the sale of tangible personal property over which the fractional share owner obtains taxable control over the aircraft if:

1. There is no transfer of possession, control and/or use to the fractional share owner during the term of the contract;

2. The operator of the fractional aircraft ownership program ("Operator") maintains the rights to hire/fire pilots;

3. The Operator uses its own discretion in performing services and generally selecting its own routes (through the fractional share owner may designate takeoff and landing destinations);

4. The Operator retains responsibility for operation of the aircraft; and

5. The Operator directs the operation and pays all operating expenses, not including any charge-backs to the fractional share owner to recoup expenses.

The Advisory Opinion also notes that aircraft falling within the definition of general aviation aircraft are exempt from the sales tax independent of the factors above.

Advisory Opinions are only limited to the facts set forth in the opinion, are binding only on the person to whom it is issues, and are not intended to cover every situation or replace existing law. As such, competent counsel should be engaged to assist in structuring and drafting fractional share ownership programs, and should be involved in any assessment as to potential tax implications of fractional share sales.

The New York Department of Taxation and Finance Advisory Opinion is Opinion TSB-A-17(1)S (2017).