



FACTS

FOR OWNER/PILOTS

HOW TO PRESERVE THE CONFIDENTIALITY OF YOUR FLIGHTS.

PUBLIC ACCESS TO IFR FLIGHTS

The FAA developed the Aircraft Situation Display to Industry (ASDI) data to distribute to private subscribers both real-time and historic data for general aviation aircraft. This information includes location, altitude, airspeed, destination and time of arrival, and it is searchable by tail number for all IFR flight plans within U.S. airspace. There has been a proliferation of vendors subscribing to the service and making it available to the public. Our firm subscribes to the service so that we may assist clients in reconciling their individual logbooks with FAA records. Other legitimate users of the service include flight departments, charter operators and fixed based operators.

ENTER THE TAXING AUTHORITIES

The recent controversy raised by Maine's aggressive positioning that visitors who spend 20 days a year there are subject to use tax on the entire value of their aircraft, serves as a stark reminder of how this data might be used on the unsuspecting. Maine, like many other states, recognizes that their ability to place liens on aircraft and require expensive litigation to get them removed, places them in an ideal position to force the unsuspecting to absorb an unfair, if not unconstitutional, use tax. The Maine Department of Revenue touts the success of the program on its ability to generate revenue, not any reasonable basis of fairness.

Jurisdictions less likely to flaunt constitutional limitations are mining this data and sending out inquiries. Even a successful defense takes time and money away from running a business. As state coffers get tighter, and tax collectors get louder, we anticipate an exponential increase in the

use of this flight data by not only sales tax collectors but also income tax and property tax agents.

AND IT'S NOT JUST ABOUT TAXES

The Naples Airport Authority imposes a voluntary curfew on night operations of all aircraft. The Naples Newspaper publishes a list of curfew violators with the stated purpose of embarrassing operators before their friends and neighbors. This loss of passenger's privacy and possibly security is clearly beyond what was intended with the institution of the ASDI program.

HOW ABOUT YOUR COMPETITORS?

Public information has been available by tail number for the last several years. Competitors, who are interested in your major customers, suppliers and the like, might derive significant confidential data by reviewing your historical flight logs.

TIME TO BLOCK YOUR N NUMBER?

The National Business Aviation Association designed the Block Aircraft Registration Request (BARR) program where your aircraft will not be identified by flight tracking software. The NBAA administers the program gratuitously for both members and non-members.

You may prevent the dissemination of the data either at the FAA level or at the vendor level. Imposing the block at the FAA level appears more secure, but it is absolute. If you would prefer to provide limited access of the data to designated parties, you should select vendor suppression.

NBAA has a simplified procedure to participate in the program through

<http://web.nbaa.org/public/ops/asdi>. All participants will need to provide a copy of their aircraft registration with the application. Non-members of NBAA must also furnish a copy of their aircraft airworthiness certificate.

With the explosive expansion of information available on the Internet, it is more important now than ever that you protect the confidentiality of your flight records. We recommend that everyone consider the potential impact of having these records available in perpetuity. •

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This article is designed to provide information of general interest to the public and is not intended to offer specific legal advice. You should consult Advocate Aircraft Taxation Company or your tax and aviation advisor if you have a matter requiring attention.

If you take your newly acquired aircraft to the State of Florida anytime in the first six months of ownership you may be liable for the Florida Use Tax.

It is a whopping 6% of the purchase price of the aircraft, and it can be applied even if you paid Sales Tax where you live.

And being domiciled in states like Delaware or New Hampshire, which do not have a Sales Tax, won't help you. So if you decide to take the family to, say, Disney World for their first trip in your newly-acquired airplane, lookout! The Big Bad Wolf in Florida is not one of the loveable Disney characters.

FLORIDA ISN'T ALL SUN AND FUN

An existing Florida statute meant to dissuade Florida residents from buying big-ticket items outside of the state and then bringing them to Florida to use is the culprit (212.05 – Sales, Storage, and Use Tax). The law was originally directed toward owners of boats and RVs and there are specific exemptions for those items that last as long as six months. With airplanes, however, the exemptions do not apply:

- If an airplane is purchased in Florida it has to be removed from the state within 10 days or the 6% Sales Tax kicks in.
- If the aircraft is removed from the state within 10 days and then brought back into the state anytime in the next six months the Use Tax becomes collectable.
- Florida Use Tax is also applicable for aircraft purchased outside of Florida – new or used – but brought into the state within six months of the purchase date.
- Currently, the only existing exemptions are for maintenance events and fuel stops. Aircraft may be brought to Florida for repairs but must be removed from Florida within 20 days after the completion of the repairs.
- Transient fuel stops of less than 24 hours are reportedly exempt although the statute itself does not make that clear.

EVEN FLIGHT TRAINING ISN'T SAFE

You will notice that the existing exemptions listed above do not include flight training. That means if you happen to go to Florida for training in the first six months of ownership, and the Florida Department of Revenue (FDOR) discovers you were there, they will assess a 6% Use Tax. Having paid taxes somewhere else is of little consequence to the State of Florida. If you paid, say, \$1,500 in North Carolina taxes then Florida will assess the difference in 6% and \$1,500. In the past year Florida reportedly collected some \$14 million in revenues with this initiative, and they have taken steps to expand its scope. At least once they have dispatched personnel to record registration numbers at airports with known training facilities in an effort to catch “violators.”

If your aircraft is registered in a “low tax” (their term, not mine) state like North Carolina, South Carolina, Delaware, Montana, or New Hampshire (for example) the FDOR becomes particularly interested. Recently they have started using Internet-based flight tracking and flight history systems to broaden their net.

WE DON'T MEAN TO RUN YOU OFF

While the Florida Department of Revenue will readily admit that keeping business out of the state is not the intent of the law, they are equally quick to point out that they are tasked only with an “administrative function.” That means they will sympathize with you all the way to the bank. On more than one occasion they have said that more people need to complain – that's how the boat and RV exemptions evolved.

Efforts are under way to enact a legislative change, and the Governor is reportedly prepared to sign an appropriate bill, but there are no legislative sessions scheduled until the first quarter of 2008!

Florida-based manufacturers are keenly aware of the tax and have implemented ways to comply with the allowable exemptions. Without a manufacturer or one of its dealers looking out for me, if I owned an airplane that was going to Florida in the first six months of ownership I'd have a light bulb changed and get a logbook entry – even if the bulb wasn't burned out.

Through the years, we have all been aware of ridiculous legislation at local, state and federal government levels. But this Florida Use Tax truly deserves a special “Big Bad Wolf” award. •

