



# COMMONWEALTH of VIRGINIA

Department of Taxation  
Richmond, Virginia 23282

*Sent to  
Dennis Akers  
Northern D/O*

## MEMORANDUM

TO: Russell C. Whitehead, Jr., Supervisor  
Taxpayer Assistance Section

DATE: October 19, 1987

RE: Application of the Aircraft Sales Tax to  
Aircraft Sold at Washington National Airport

This will refer to my recent memorandum on the application of the aircraft sales and use tax to aircraft sold or used at National Airport.

After reviewing the memorandum, Buck Burnley commented that the policy set forth in the memorandum was inconsistent with departmental regulations and previous documents. Specifically, Buck referred to the provisions in Virginia Regulations 630-11-1502 and 630-10-1506, which state that no tax is due unless an aircraft is required to be licensed with the Department of Aviation pursuant to § 5.1-5 of the Code of Virginia.

The provisions referred to by Buck relate back to a provision found in former § 58-685.32 of the Code of Virginia, which in fact required an aircraft to be licensed in order for the tax to apply. However, this provision was repealed by the 1984 session of the General Assembly. As such, the department's regulations are inconsistent with the law as it exists now. This situation will be corrected when the Virginia Aircraft Sales and Use Tax Regulations are next revised.

Due to the repeal of the requirement that an aircraft be licensed in order for the tax to apply, the department has full power to assess the aircraft sales tax on aircraft sold at National Airport, whether or not the aircraft will be licensed in Virginia. This, of course, is consistent with the retail sales tax, i.e., the point of sale determines the application of the tax.

Upon further review, I also feel that the department has the authority to assess use tax upon aircraft that are imported into the state and based at National Airport even though § 58.1-1502.2 of the Code of Virginia provides for the

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Russell C. Whitehead, Jr.

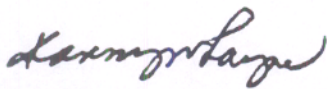
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assessment of the aircraft use tax on planes that are required to be licensed in Virginia. This is due to the fact that only those aircraft that are subject to the aircraft sales and use tax are exempt from the retail sales and use tax under § 58.1-608.29 of the Code of Virginia.

Since aircraft based at National Airport are not subject to the aircraft use tax (because the Department of Aviation cannot issue licenses at the airport), technically the department may impose the full 4 1/2 % use tax on all planes based at the airport. This is analogous to the treatment of documented boats under the watercraft sales and use tax, i.e., documented boats are excluded from the definition of "watercraft," thus are subject to the full 4 1/2 % retail sales and use tax.


In this case, however, I feel we may continue to assess the 2 % aircraft use tax on planes based at National Airport, rather than to assess the 4 1/2 % use tax. To do otherwise would mean treating owners who base aircraft at National differently than those who base aircraft at other Virginia airports.

Please let me know if you have any questions.



Danny M. Payne, Director  
Tax Policy Division

APPROVED:

  
W. H. Forst  
Tax Commissioner