IDAHO
STATE TAX COMMISSION



# Aircraft Leasing and Rental

## *Key Tax Considerations*

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## Leasing/Renting

The guidance in this section refers to leasing and renting aircraft but the same information applies to both types of transactions. For consistency, the terms “lease”, “leasing”, “lessor”, and “lessee” will be used throughout this guide to refer to both rental and leasing arrangements.

The main difference between a lease and a rental agreement is the length of the agreement. A lease agreement is a long-term contract (usually 6 to 12 months or longer) and a rental agreement is a short-term contract (month-to-month, day-to-day, daily use, etc.).

## What You Need to Know about Leases

| Types of Leases | |
|---|---|
| **Basic Lease** | The customer returns the property to the lessor at the end of the lease term. The lessor charges sales tax on each lease payment. |
| **Lease with Option to Buy** | The customer has the option to buy the property during the lease term or at the end of the term at fair market value. The lessor charges sales tax on each lease payment and on the amount the customer pays when buying the property at the end of the agreement. |
| **Lease-Purchase** | The customer makes regular payments during the lease term. At the end of the term, title to the property passes to the customer for $0 or for an amount substantially less than fair market value. Because the customer owns the property at the end of the lease term, this arrangement is treated as a sale with financing. The lessor collects sales tax at the beginning of the lease term on the total of all payments the customer will make. |

**Lessor:** An owner of an aircraft who gives another party the right to use the aircraft in exchange for payments. A lessor can also be an individual or business who has the right or permission to sublease an aircraft they are leasing from another party.

**Lessee:** A person or business that pays for the right to use an aircraft. The lessee does not own the aircraft.

**Bare Equipment Lease:** A bare equipment lease is when the owner/lessor leases out only the aircraft, and the lessee operates it or has operational control. Bare equipment leases, also known as dry leases, are taxable unless an exemption applies.

**Operational Control:** The lessee has authority over scheduling flights, is accountable for compliance with Federal Aviation Administration (FAA) regulations, and provides the pilot and crew.

**Fully Operated Lease:** If the lessor leases the aircraft and provides a pilot to operate it throughout the leasing period, or the lessor pilots the aircraft themselves, this is considered a fully operated lease,(also known as a wet lease) and is not taxable. The owner or supplier of the aircraft used in a fully operated aircraft lease is the consumer of the aircraft and owes tax when purchasing the aircraft.

**Out-of-State Lease:** A lease where a lessee will use or store the aircraft out of state and will not bring it into Idaho for more than 90 days within any twelve-month period.

Aircraft are tangible personal property. Leases of tangible personal property are taxable sales unless an exemption applies. See the Information for the Lessor and Information for the Lessee sections below for further details on exemptions.

## Recommended Components of a Lease Agreement

**A well-documented lease agreement will be in writing and typically includes:**

- Names and addresses of both the lessor and lessee.
- A clear description of the aircraft being leased.
- Financial terms, such as the lease rate and what it is based on (e.g., $500 per month, $150 per flight hour). These terms should reflect market conditions at the time of the agreement.
- The lease term (start and end dates).
- A statement describing who has operational control (wet or dry lease).
- Identification of which party is responsible for insurance coverage, maintenance, and other expenses.
- Signatures of all parties.

**Note:** The Tax Commission may review the financial terms of an agreement for reasonableness.

Terms that appear unreasonable may impact whether a lease qualifies for a certain exemption, such as the resale exemption.

**Examples of lease agreements that may not meet best practices**

- Verbal agreements.
- Agreements missing essential information listed in the recommended components above.
- Agreements that offset or reduce the lessee's financial obligations (e.g., $150 per hour lease, reduced by a $45 fuel reimbursement). In such cases, the full lease rate is subject to sales tax.
- Backdated contracts. Edits or updates only apply from the date all parties sign the revised agreement.
- Arrangements where no payments or other consideration are exchanged.

## Conducting a Lease Agreement

Leases of aircraft should include:

- A written lease agreement with the recommended components listed above.
- A valid seller's permit held by the lessor.
- Collection and remittance of sales tax by the lessor as required by law.
- Following the terms of the lease agreement, including billing and collecting payments.

If the terms of the agreement between the parties are not followed, the transaction may not qualify for certain tax exemptions.

Failure to comply may disqualify the lessor for any exemptions claimed when purchasing the aircraft and may result in a tax due on the original purchase or use of the aircraft.

For example, if LLC A owns an aircraft and leases it to LLC B but fails to charge lease payments to LLC B, this is not an acceptable lease arrangement.

## Information for the Lessor

Lessors may purchase an aircraft exempt for resale when they intend at the time of purchase to primarily lease it as bare equipment and begin leasing it within a reasonable timeframe. To claim this exemption, the lessor provides the seller with a completed Form ST-101, which requires an Idaho seller's permit number.

To register for an Idaho sales tax permit, you can complete an IBR-1 (Idaho Business Registration) application on-line at https://tax.idaho.gov/online-services/business-registration/. The application requires an EIN for all businesses including single-member LLCs.

A lessor is considered a retailer for sales tax purposes. The lessor collects sales tax unless the customer qualifies for an exemption and provides a completed Form ST-101 – Sales Tax Resale or Exemption Certificate. If no exemption form is received, the lessor is responsible for collecting and remitting tax. If tax is not collected, either party may be responsible for paying any tax owed.



### Idaho companies leasing out property in another state

Lessors with aircraft used outside Idaho have different sales tax responsibilities:

- **No Idaho tax:** The lessor delivers the property outside of Idaho and the customer does not use it in Idaho during the lease term.
- **Idaho tax on the first lease payment only:** The lessor delivers the property in Idaho, and the customer uses it outside Idaho for the remainder of the lease term.

**Note:** Lessors should maintain records documenting the point of delivery and where the aircraft is used during the lease term.

### Out-of-state companies leasing out property in Idaho

Out-of-state companies that lease property in Idaho are generally expected to:

- Obtain an Idaho seller's permit before leasing property in the state. Learn more about getting an Idaho seller's permit.
- Collect and remit sales tax on the lease payments unless the lessee provides a completed Form ST-101 – Sales Tax Resale or Exemption Certificate.
- Report income from Idaho leases on your Idaho income tax return.

### Lessor's own use of the aircraft

If a lessor uses the aircraft for their own benefit or business operations, use tax based on a fair market rental value generally applies. This does not apply if the aircraft is primarily used for an exempt purpose as listed in Idaho Code section 63-3622GG.

## Responsibilities of the Lessor

1. Obtain an Idaho seller's permit.
2. Have a written lease agreement in place at the beginning of the leasing arrangement.
3. Collect and remit sales tax on lease payments unless an exemption applies.
4. Maintain documentation such as:
    a. Written lease agreement (original and updated versions).
    b. Sales records.
    c. Flight records.
    d. Maintenance logs.

e. Exemption certificates provided by lessees.

f. Records supporting sales tax collected or not collected.

g. Records explaining delays in beginning the lease arrangement. (e.g., Certification delays for the aircraft).

h. Certification required to operate the aircraft for specific uses, such as charter operations.

i. For out-of-state leases: Records documenting the point of delivery and place of use during the lease term.

5. When an aircraft is removed from lease inventory and is no longer intended to be leased, use tax generally applies based on the fair market value of the aircraft at that time.

6. Report all leasing income on individual or business income tax returns.

## Information for the Lessee

**Lessees may qualify for an exemption if:**

- The primary use of the aircraft is for transportation of passengers or freight for hire as a common carrier and meets the requirements of Idaho Code section 63-3622GG.*
- The primary use of the aircraft is for air ambulance services.*
- Nonresident leasing the aircraft and takes the aircraft out of state and will not use or store the aircraft in Idaho more than 90 days in any 12-month period.
- The aircraft is fixed-wing and will be primarily used as an air tactical group under contract with a government entity. Proof of the contract is required.*
- The primary use of the aircraft will be for agricultural spraying, dusting, seeding, livestock and predatory animal control, or forest and wildlife conservation.*



*Hot air balloons and gliders do not qualify.

See Idaho Code section 63-3622GG for complete exemption requirements.

## Responsibilities of the Lessee

It is generally the responsibility of the lessee to:

1. Sign the lease agreement with the lessor.

2. If applicable, provide the lessor with a completed exemption form when claiming exempt use of the aircraft.
3. Maintain documentation such as:
    a. Written lease agreement (original and updated versions).
    b. Invoices from lessor.
    c. Flight records.
    d. Maintenance logs.
    e. Any other documentation supporting sales tax paid or not paid.
4. Make payments according to the terms of the lease agreement.
5. Follow all terms of the lease agreement.
6. Pay use tax on the lease rate to the state if the lessor fails to collect tax. This doesn't apply if the use of the aircraft is primarily used for an exempt purpose listed in Idaho Code section 63-3622GG.

# Common Scenarios

### Related Party Leases

Related party leases are acceptable as long as the arrangement follows the general guidance listed in the earlier sections.

An individual owns an aircraft and leases to his business, Business B (a separate legal entity). There is a written lease agreement in place. The lessor typically will:

- Collect and remit tax on the lease payments, unless Business B qualifies for an exemption.
- Obtain a completed exemption form from Business B when an exemption is being claimed.
- Pay use tax for any personal/business use unless the aircraft is primarily used for an exempt purpose other than resale.

### Lease to a flight school

When an aircraft primarily purchased and used for leasing is then leased to a flight school, the purchase of the aircraft may qualify for the resale exemption. The lease to the flight school is generally taxable.

If the lessor uses the aircraft during the lease term, use tax generally applies on a fair market rental rate unless the lessor rents the aircraft directly from the flight school at a fair market rental rate (typically the same rate as being charged by the school to others) and the flight school collects tax on that rental.

### Flight school rents out aircraft

A flight school leases an aircraft from Business A and pays sales tax on the lease payments. The flight school may also rent the aircraft to pilots for use separate from flight lessons; these rentals are taxable, and the flight school collects and remits sales tax to the state. The flight school also collects tax on sales of other tangible personal property such as logbooks, books, memorabilia, or similar items. Charges for flight lessons are not taxable sales.

### Flying clubs

Flying clubs that rent aircrafts to their members may purchase an aircraft exempt under the resale exemption and then collect and remit sales tax on rentals to members. Flying clubs also collect tax on membership fees or dues, and on sales of tangible personal property (such as merchandise). See Idaho Rule 038 for more information on flying clubs.

### Personal/Business use first, then leased later

An individual or business may purchase an aircraft and pay sales tax at the time of purchase if the aircraft is initially intended for personal or business use. If the aircraft is later leased to others, the original tax paid at purchase remains correct because resale was not the intended purpose at the time of purchase. The tax paid at purchase does not affect whether tax needs to be collected on later lease payments. The lessor generally collects sales tax on taxable lease payments unless the lessee qualifies for an exemption.

*For any questions that may not have been answered in this guide or for clarification, contact the Idaho State Tax Commission at (208) 334-3660.*

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