

Preemption of State Tax on Air Commerce Recreational Activities

Federal Law Preempts Tennessee Amusement and Business Taxes on Air Commerce Recreational Activities

A federal law known as the Anti-Head Tax Act ("AHTA") preempts amusement tax on admissions, dues, and fees on air commerce recreational activities and business tax on gross receipts from air commerce recreational activities.

Federal Anti-Head Tax Act

The AHTA prohibits the levy of state and local taxes on:

- an individual traveling in air commerce;
- the transportation of an individual traveling in air commerce;
- the sale of air transportation; or
- the gross receipts from air commerce or transportation.

For this purpose, *air commerce* is defined as foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce.

Recreational and entertainment activities to which the AHTA applies include but are not limited to, scenic helicopter tours, skydiving, and untethered hot air balloon rides.

Because the AHTA prohibits the levy of tax on sales or gross receipts derived from activities involving air

commerce, the AHTA preempts the application of sales tax to admissions, dues, and fees for recreational and entertainment air commerce activities. The AHTA also preempts the application of business tax to gross receipts from recreational and entertainment air commerce activities.

A provider of recreational and entertainment air commerce activities must collect and remit sales and use tax on its sale of goods or services, other than those involving air commerce (e.g., the sale of gift shop items). Gross receipts from sales not involving air commerce are subject to the business tax.

AHTA Does Not Preempt Franchise and Excise Taxes

The AHTA's prohibition of the levy of state taxes does not apply to franchise and excise taxes. Providers of recreational and entertainment air commerce activities otherwise subject to franchise and excise taxes remain liable for franchise and excise taxes.

For More Information

Visit www.tn.gov/revenue. Click on Revenue Help to search for answers or to submit an information request to one of our agents.

References

Tenn. Code Ann. § 67-6-212; Tenn. Code Ann. § 67-4-708; 49 U.S.C. § 40116; 49 U.S.C. § 40102