

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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March 28, 1991

Ms. S--- S---
Law Offices of
---, -- & ---
--- ---, XXXX --- ---
--- ---, CA XXXXX-XXXX

H--- A--- I---, Inc.
SP UT XX-XXXXXX

Dear Ms. S---:

This is reply to your January 31, 1991 letter regarding the application of sales and use tax on the transfer of an aircraft under the following facts you presented:

“Mr. R--- J. F--- (‘F---’) is the sole trustor and sole trustee of a revocable intervivos trust (The R. J. F---Trust No. 1, u/a dated September 10, 1975; the ‘Trust’) established for the sole benefit of F--- during his lifetime. At the time of the transfer, the Trust owned several aircraft which were used by F--- for his personal use and enjoyment.

“H--- A--- I---, Inc. (‘Corporation’) is a corporation formed under the laws of the State of California. At the time of the transfer of the aircraft into the Corporation, the Corporation had no outstanding stock. The Trust transferred one of the aircraft that it owned to the Corporation solely in exchange for 100% of the outstanding stock of the Corporation. The aircraft that was transferred to the Corporation was wholly owned by the Trust, and neither F--- nor the Trust received any consideration, such as cash, notes or an assumption of indebtedness (if any) in connection with the transfer of the aircraft to the Corporation. F--- has continued to use the aircraft for his personal use and enjoyment following the transfer of the aircraft to the Corporation.

“The Trust is not and will not be bound to transfer any of its stock in the Corporation.”

You inquired with two letters each concerning the identical facts quoted above. We answered your other letter with the assumption that the aircraft is as defined in Sales and Use Tax Regulation 1610, Vehicles, Vessels and Aircraft. However, we note that information this Board received from the Federal Aviation Administration shows that R--- J. F---, Trustee, transferred a 1980 Raven Balloon to H--- A--- I---, Inc. We assume that the balloon is the aircraft to which you refer. This Board has taken the position that a balloon is not an aircraft for purposes of Sales and Use Tax Regulation 1610. Therefore, the application of sales and use tax to the transfer of the balloon is the same as the application of tax to sales of tangible personal property in general. For purposes of this opinion, we will assume that the Trust has made more than two retail sales of tangible personal property during the preceding 12-month period such that the Trust is a retailer and the sale is not an exempt occasional sale. (Cf. Rev. & Tax. Code §§ 6006.5, 6019, 6367.) If the Trust is a retailer and makes a retail sale of a balloon in California, the applicable tax is the sales tax imposed on the gross receipts of the retail sale. (Rev. & Tax. Code § 6051.)

The issue here is whether the stock transferred by the corporation to the Trust in exchange for the aircraft constitutes “gross receipts”. “Gross receipts” means the total amount of the sale or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise. (Rev. & Tax Code § 6012.) As you know, Sales and Use Tax Regulation 1595, Occasional Sales, subdivision (b)(4) provides:

“Tax does not apply to a transfer of property to a commencing corporation or commencing partnership in exchange solely for first issue stock of the commencing corporation or an interest in the commencing partnership. Tax does apply, however, if the transferor receives consideration such as cash, notes, or an assumption of indebtedness, and the transfer does not otherwise qualify for exemption. The tax is measured by the amount of such consideration attributable to the tangible personal property transferred.”

The rule that tax does not apply to a transfer of property to a commencing corporation in exchange solely for the first issue stock of a commencing corporation is predicated on the first issue stock of a commencing corporation not having a measurable value, because any value is only speculative.

Under the facts you provided, tax does not apply to the Trust’s sale of the aircraft to the Corporation provided that the Corporation was a commencing corporation at the time of the transfer. You first contacted us in 1986 regarding these transactions. We assume that the Corporation did not accrue corporate assets in the meantime that would make the stock issued have a measurable value such that the Corporation would be providing a consideration to the Trust by transferring the shares of stock. In such case, the transfer of the aircraft to the

commencing corporation solely in exchange for the first issue stock is a nontaxable transfer. Neither sales tax nor use tax applies to the transfer.

We hope this answers your question; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr