M e m o r a n d u m

395.0828

To: San Mateo – Audit (HF)   Date: June 30, 1981

From: Headquarters Legal (RLD)

Subject: Sale of an Airplane

This is in reply to your May 12, 1981 Mini Memo wherein you asked whether use tax applies when a member of a flying club relinquishes his interest in the club, and in the plane, to the remaining members.

Of course, if the retiring member owned his interest in the aircraft outright and merely relinquished his share for no consideration, there would be no sale and, consequently, use tax would not apply. However, we believe that where the remaining partners pay the retiring member for his share or assume an indebtedness owed by the retiring member, the transaction is a sale subject to use tax.

You also ask if it would matter that after the sale, the ownership would be "substantially unchanged."

Section 6281, Revenue and Taxation Code, provides:

> "There are exempted from the taxes imposed by this part…the storage, use, or other consumption in this state of, …aircraft, when such property is included in any transfer of all or substantially all the property held or used in the course of business activities of the person selling the property, and when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership' of the property of such corporation or other entity."

See also Reg. 1595.
SPJ 7/11/01.

The exemption does not apply to the sale by individuals of their co-ownership interest in an aircraft. Therefore, the use tax would apply to the sale of a co-ownership interest in an aircraft regardless that the ultimate ownerhip of the aircraft would remain substantially similar to that which existed before the sale.

We hope this answers your question. If you need further information, feel free to call or write.

RLD:jw