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March 25, 1992

BURTON W. OLIVER
Executive Director

Mr. L--- I---
L--- I--- and Associates
XXXX --- Boulevard
--- ---, CA XXXXX

Dear Mr. I---:

This is in reply to your December 21, 1991 letter regarding the application of use tax to your transfer of an aircraft into a trust under the following facts you provided:

“I own an aircraft, purchased in 1988 in California and on which sales tax was duly paid. I intend to transfer ownership of this aircraft to a revocable grantor trust of which I am both the grantor and trustee, identified as the L--- I--- Family Trust. My principal purpose is to avoid probate with regard to the plane and various other assets, in the event of my death.”

Given this information, you asked whether your transfer of the aircraft into the trust is a sale for purposes of the Sales and Use Tax Law.

When an aircraft is sold at retail in this state by any person other than a person engaged in the business of selling aircraft, the purchaser is required to pay use tax to the State Board of Equalization. (Sales and Use Tax Reg. 1610, Vehicles, Vessels, and Aircraft, subd. (c)(2)(A)). Under the Sales and Use Tax Law, a “person” includes a trust, and the law makes no distinction between revocable and irrevocable trusts. (Rev. & Tax. Code § 6005).

The application of tax to the transaction you described depends upon whether the transaction is a purchase. Revenue and Taxation Code section 6010 defines “purchase” generally to be any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration.

If you own the aircraft outright and make a donation of the aircraft to the trust for no consideration, the transaction would not be subject to use tax. However, if the trust provides you with a consideration in exchange for the aircraft, the use tax would apply. For example, assume the following situation. There is an outstanding loan against the aircraft and you transfer the aircraft and a bank account into the trust. The trust assumes liability of the loan or you make payments on the loan from the trust bank account. To that extent, there is a consideration given to you by the trust for the aircraft, and use tax applies.

We hope this answers your questions; however, if you need further information, feel free to write again. In such case, please provide a description of the transaction including any possible consideration which the trust might provide to you for the aircraft.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.