STATE BOARD OF EQUALIZATION

December 21, 1962

In your letter of December 3, 1962, you gave your reasons for believing that use tax should not apply to certain ground equipment purchased out of state for use by _____ here. The equipment consists of two mobile ramps purchased in Florida on June 15, 1959, for $17,690 and one tugmaster purchased in England on April 15, 1959, for $15,469.

The mobile ramps are stairs on wheels and their use by _____ is to place them at the fore and aft entrances of its aircraft so that the crew and passengers may enter and leave the aircraft.

These items are used only with _____ aircraft. _____ is a foreign air carrier and its operations in the United States are limited to transit in foreign commerce.

As we mentioned at our conference on November 27, 1962, we are inclined to the opinion that under the reasoning of Southern Pacific Co. v. Gallagher, 306 U.S. 167, use tax properly applies to the storage or use of these items in California prior to their being placed in use in foreign commerce. In that case it was stipulated that all of the purchases of _____ that were there in question "may be said to be dedicated to consumption in the interstate transportation business of appellant." The conclusion of the court was succinctly stated at pages 176 and 177, where it said:

> "In the present case some of the articles were ordered out of the state under specification suitable only for utilization in the transportation facilities and installed immediately on arrival at the California destination. If articles so handled are deemed to have reached the end of their interstate transit upon 'use or storage,' no further inquiry is necessary as to the rest of the articles which are subjected to a retention, by comparison, farther removed from interstate commerce. We think there was a taxable moment when the former had reached the end of their interstate transportation and had not begun to be consumed in interstate operation. At that moment, the tax on storage and use—retention and exercise of a right of ownership, respectively—was effective. The interstate movement was complete. The interstate consumption had not begun."

Here, too, we think there was a taxable moment when the ground equipment of _____ had reached the end of its movement into California and it had not yet begun to be used in interstate commerce. Our research, while not exhaustive, has not disclosed any case which would indicate that a contrary result would be correct.

We thank you and the _____ representatives for the opportunity of meeting with you and them. Co-operation of this type makes our job of administering the tax laws much easier.

Very truly yours,

John H. Murray
Associate Tax Counsel

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cc: San Francisco – District Administrator