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January 27, 1994

Re: Aircraft – Use Tax Opinion

BURTON W. OLIVER
 Executive Director

Dear REDACTED TEXT,

This is in response to your letter of October 22, 1993 regarding the application of California Use Tax to the purchase of an aircraft. We understand that REDACTED TEXT is an “S” corporation and a general partner in REDACTED TEXT, a California limited partnership. REDACTED TEXT is purchasing an Astra Jet (“aircraft”) in Oregon. REDACTED TEXT will use the aircraft in two capacities; first, to provide transportation for executives and clients of REDACTED TEXT and REDACTED TEXT and second, in a charter business when the aircraft is not used for REDACTED TEXT or REDACTED TEXT business.

REDACTED TEXT anticipates the first functional flight of the aircraft will be from Oregon to California to pick up one or more executives of REDACTED TEXT for transportation to a specific destination which may be within or without California. Thereafter, the aircraft will be used for flights both in California and outside California.

Your letter cited two Business Tax Law Guide annotations. You noted:

“If the airplane is first flown from Oregon to California to pick up a specific passenger or passengers for transport to a specific destination, then the first functional use will be outside of California. A 1958 SBE Ruling appears to hold that when a truck was purchased outside of California and ‘deadheaded’ to California for its first payload, the use tax applied. SBE Sales Tax Counsel Ruling (1/24/58), Business Taxes Law Guide, ¶570.0100. However, subsequent to the 1958 Ruling, the SBE promulgated a more comprehensive ruling which held as follows:

“Functional use means use for which the vehicle was designed. For example, if the only use of a truck outside of California to pick any payload it could find, the first functional use would be in California. However, if it were dispatched to California to pick up a specific payload, the first functional use would be outside of California.” SBE Sales Tax Counsel Ruling (1/7/74; 3/22/84; and 1/28/91), Business Taxes Law Guide, 570.0430(1).”

You note that under the board’s current policy, if the aircraft is flown to California to pick up passengers, and transport them to specific destination, the first functional use will be outside of California.

Annotation 570.0430 does not reflect a change in policy. Rather, it is predicated on the assumption that the property is delivered to the purchaser outside California for a sufficient business purpose other than only as a device to escape payment of use tax. Under the facts of Annotation 570.0100, the purpose of the out-of-state delivery was solely a device to escape sales or use tax. We will assume that, under the facts you present, REDACTED TEXT does not take delivery of the aircraft in Oregon solely to escape payment of sales or use tax but has sufficient business purpose for taking delivery in Oregon to justify it as a means of avoiding sales or use tax. With that assumption, we advise REDACTED TEXT:

1. If the aircraft is first flown from Oregon to California to pick up a specific passenger or passengers for transport to a specific destination within or out of California, then the first functional use will be outside of California.
2. REDACTED TEXT use of the aircraft will not be subject to the California use tax if the first functional use of the aircraft is outside of California and the aircraft is used or stored outside California one-half or more of the time during the six-month period immediately following its entry into California.
3. Storage or hanger time shall be counted in determining whether the airplane is used within or outside of California during the six-month test period.

Very truly yours,

Ronald L. Dick
Staff Counsel