

M e m o r a n d u m**715.0010**

To: Inglewood – Auditing (JKI: L. Slavich)

Date: January 27, 1983

From: Tax Counsel (JHM) - Headquarters

Subject: [L]

S- -- XX-XXXXXX

I have reviewed the request for tax opinion attached to your memorandum of November 16, 1982.

Under the exemption from local tax, as explained in Regulation 1805, the property must be used by the aircraft operator “directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation....” Of this, [L]’s counsel states:

Regulation 1805(b) clearly envisions a “functional” or “use” test. The exemption is not based on the physical location of property; instead, the Regulation requires that exempt property be used exclusively in the use of aircraft as common carriers of persons or property. The equipment at issue here meets that test. While the equipment may be loaded off the aircraft, the equipment is exclusively used for the purpose of shipment of air cargo. The equipment is not used for incidental storage, nor is it used for transportation apart from shipment of air cargo.

These containers were designed specifically for use on aircraft, and were manufactured under approved Federal Aviation Administration (“FAA”) procedures. The containers were subject to FAA regulatory standards, and were specifically tested to establish their ability to retain items of mass. They are shaped to fit tightly against the curvature of an aircraft hull and in fact connect and lock, through a specialized system, into the aircraft interior. Because of these specialized design features, the containers simply are not economically used for any function other than shipment of air cargo.

Moreover, as a result of these design features, the containers are quite expensive. Use of the containers for other functions would represent an extremely poor use of capital and labor, since the very features that make the containers valuable for the shipment of air cargo (such as curvature of their side wall) make the containers cumbersome and awkward for ordinary storage and transportation functions.”

I am inclined to agree that this shows that the cargo containers were "directly used". This is consistent with annotations 715.0230 and 715.0340.

However, in our telephone conversations you stated that some, if not all, of the cargo containers were transported to shippers who filled them. Then the filled containers were transported, much as sea vans, over the highway to the air carrier's docks. When shipping space was available, the filled containers were loaded on the aircraft and carried to the destination. Cargo in incoming containers was delivered in the containers and over the roads and highway to the consignor of the goods.

Under these circumstances the cargo containers are not used by the aircraft operator exclusively in the operation of aircraft as common carriers of persons or property for hire or compensation. The exemption does not apply with respect to such cargo containers.

JHM:lp