

**STATE BOARD OF EQUALIZATION**

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March 27, 1984

Mr. J--- R. W---
Post Office Drawer XXX
---, California XXXXX

Dear Mr. W---:

This is in reply to your February 28, 1984 letter regarding the application of sales tax to the following example you provided:

“An aircraft purchased for lease back to an operator operating under FAR 135 of the FAA Regulations. The aircraft is used part time as a common carrier in charter operations and is flown part time by the owner.”

Section 6366.1, Revenue and Taxation Code, provides, in relevant part:

“(a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of and the storage, use, or other consumption in this state of aircraft which are leased, or are sold to persons for the purpose of leasing, to lessees using such aircraft as common carriers of persons or property under authority of the laws of this state, of the United States or any foreign government....”

A “common carrier” is a person who engages in the business of transporting persons or property for hire or compensation and offers his services indiscriminately to the public or some portion of the public. Generally, a person’s advertising (telephone book, magazine, brochures, etc.) determines whether he is holding himself out indiscriminately to the public. Carriers operating under FAR 121 and FAR 135 are considered as operating “under authority of the laws of this state, of the United States or any foreign government”.

Under Sales and Use Tax Regulation 1593, Aircraft, the Board examines the first 12 months’ operational use of the aircraft to determine whether the lessee is using an aircraft as a common carrier. If the purchaser does not own the aircraft for the 12-month period, then only the time the purchaser owns the aircraft is considered.

Although the lessee in your example operates under FAR 135 of the FAA Regulations, it is important to note that the lessee's "operational use" of the particular aircraft during the test period determines whether the sale is exempt from tax. "Operational use" is defined at Regulation 1593(b)(1). In the example you provided, if the lessee's operational use of the aircraft is common carriage for more than 50 percent of the time during the test period, then the sale would be exempt from sales tax.

Since common carriage involves the transporting of persons or property for hire, if the lessee merely rented out the plane without a pilot or used the plane to conduct flight instruction, such operational use would not be common carriage.

We hope this answers your question; however, if you need further information, feel free to write again.

Very truly yours,

R. L. Dick
Tax Counsel

RLD:jw