

M e m o r a n d u m**105.0195**

To : Ms. Denise Mower
Consumer Use Tax Division

Date: January 28, 1993

From : Donald L. Fillman
Tax Counsel

Subject: Aircraft Use
T--- F--- - SP UT XX-XXXXXX

This is in response to your memorandum of November 18, 1992. We have reviewed the two memos you enclosed, dated July 22, 1974 and December 1, 1975, along with Revenue and Taxation Code section 6366.1 and Regulation 1593.

Although some changes have been made in Regulation 1593 since the date of the memos, we believe both memos are still accurate. Regulation 1593(a) defines a common carrier as "any person who engages in the business of transporting persons or property for hire or compensation and who offers his services indiscriminately to the public or to some portion of the public." Regulation 1593(b), added in 1978, sets forth a formula for defining which "operational uses" shall be counted in determining whether over one-half of such operational uses were in common carriage.

The key issue is whether the aircraft was used for transporting persons or property. The July 22, 1974 memo quoted the uses to which 14 C.F.R. 135 do not apply. Included was "powerline and pipeline patrol." Although California's definition of common carrier is unique for purposes of the sales and use tax, this list is helpful. None of the uses on the list, in and of themselves, qualify as common carriage for California's sales and use tax purposes.

However, the December 1, 1975 memo clarifies the fact that if an aircraft's use otherwise qualifies as common carriage, it will not be disqualified just because the transport of persons or property happens to be while also patrolling a pipeline or powerline.

If A--- S--- L--- was hired to fly a P--- or an A--- employee along a powerline, it would qualify, so long as all other criteria were met. If A--- S--- L--- merely flew the line without transporting either persons or property, it would not qualify.

If you have other questions, please contact me.