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September 10, 1999

Mr. B--- J. H---
Assistant Controller
A--- S---, Inc.
XXXX --- Avenue, Suite XXX
---, CO XXXXX

Re: Account No. SR -- XX-XXXXXX

Dear Mr. H---:

I am responding to your letter dated June 21, 1999 in which you request information concerning the application of the California Sales and Use Tax Law to various activities of A--- S---, Inc. (A---).

Facts

You write that A--- provides maintenance and repairs for large commercial airlines, principally --- --- (A), --- --- (N), and [AT]. It is our understanding that both (A) and (N) are "common carriers" as that term is defined in Sales and Use Tax Regulation 1593 (copy enclosed). We are unaware of [AT]'s existence as a commercial airline or common carrier, and understand the reference to [AT] in your letter is to the company as the vendor of telephones and telephone parts. If these understandings are incorrect, please disregard this response and write to us again clarifying the status of (A), (N) and [AT].

A---, which appears to be headquartered in ---, Colorado, operates a repair station in ---, California. You state that the maintenance and repair work that A--- performs for (A) and (N) includes the use of replacement parts and repair labor on aircraft cargo containers, galley equipment, and "avionics equipment." Cargo containers (also referred to as "unit load devices" or "ULDs") carry commercial freight, U.S. Mail and, sometimes, passenger luggage; and are loaded into the cargo hold of the aircraft. Galley equipment means the food and beverage carts that are used by flight attendants on the aircraft to serve meals and beverages to passengers. You state that "avionics equipment" includes telephones that are permanently installed in the seat backs or consoles of seats on the aircraft. (For purposes of this opinion letter, we assume that these "seats" are passenger seats.)

You further write:

“Recently, A--- received a Sales Tax Exemption Certificate (the ‘Certificate’) from (A), a copy of which is attached for your reference. Based on the Certificate, (A) has requested that A--- not charge California sales tax on replacement parts used in the repair process and the associated labor in connection with the repair of cargo containers. The Certificate specifically states that purchases from A--- are exempt from California Sales and Use Tax pursuant to Section 6366 and 6366.1, aircraft component parts and Regulation 1593.” (Quoted as written.)

Discussion

A retail sale of tangible personal property in California is subject to sales tax measured by the retailer’s gross receipts, unless the sale is specifically exempted or excluded from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, *use* tax measured by the sales price applies to the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California, unless the use is exempted or excluded from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Specific exemptions from sales or use tax related to an aircraft sold, leased, or sold for the purpose of leasing, as a common carrier are provided in Revenue and Taxation Code sections 6366 and 6366.1, as implemented by Regulation 1593. In pertinent part, Regulation 1593 reads:

“(b) APPLICATION OF TAX.

“(1) AIRCRAFT. Tax does not apply to the sale of and the storage, use, or other consumption of aircraft sold, leased, or sold to persons for the purpose of leasing, to:

“(A) a person who operates the aircraft as a common carrier of persons or property, provided:

“1. the person operates the aircraft under authority of the laws of this state, of the United States, or of any foreign government, and

“2. the person’s use of the aircraft as a common carrier is authorized or permitted by the person’s governmental authority to operate the aircraft

“(2) AIRCRAFT PARTS.

“(A) When tangible personal property becomes a component part of an aircraft described in subdivision (b)(1) as a result of the maintenance, repair, overhaul, or improvement of that aircraft in compliance with FAA requirements, or United States military equivalent, the charges for such tangible personal property, as well as for labor and services rendered with respect to that maintenance, repair, overhaul, or improvement are exempt from tax provided the aircraft will continue to be used in a manner described in subdivision (b)(1).”

The regulation defines the term “component part” as follows:

“As used in subdivision (b)(2), the term ‘component part’ means an item incorporated by securing to the aircraft in compliance with Federal Aviation Administration (FAA) requirements, or United States military equivalent, related to the maintenance, repair, overhaul, or improvement of the aircraft which part is essentially associated with the functional aspects of the aircraft, including those related to safety and air worthiness.

“(A) Examples of property which are component parts are engines, passenger seats, and landing gear; items replaced, repaired, or overhauled according to manufacturer service bulletins; items required by air worthiness directives issued by the FAA; life limited parts; and cargo and baggage containers which are designed to be secured, and which are secured, to the aircraft during flight.

“(B) Examples of property which are not component parts are general expense items or comfort-related items such as attendant carts, blankets, pillows, or serving utensils.” (Reg. 1593(a)(3); emphasis added.)

Thus, as long as (1) (A) and (N) will use the subject aircraft as common carriers under the authority of the laws of the United States or of any foreign government, (2) the replacement parts become “component parts” of the aircraft, and (3) the parts are installed as a result of the maintenance, repair, overhaul or improvement of the aircraft in compliance with FAA requirements, A---’s charges to (A) and (N) for the replacement parts and the installation of these parts will not be subject to sales or use tax.

As specified in the regulation, cargo and baggage containers which are designed to be secured, and which are secured to the aircraft during flight, are “component parts” of the aircraft. As such, charges for replacement parts and labor with respect to the repair of such cargo and baggage containers are exempt from tax. In other words, if the cargo containers about which you

inquire are designed to be secured, and are secured, to the aircraft during flight, charges for their replacement parts and repair labor are exempt from tax.

The galley equipment to which you refer is food and beverage carts, or in the vocabulary of Regulation 1593(a)(3)(B), "attendant carts." These are specifically referred to in the regulation as items which are *not* component parts. Therefore, you may not in good faith accept an exemption certificate for charges related to the replacement parts for, or repair of, these carts.

As to telephones permanently installed in the passenger seat backs or consoles, the definition of the term "component parts" in the regulation states a requirement that the "part is essentially associated with the functional aspects of the aircraft, including those related to safety and air worthiness." The regulation states that examples of items which are not component parts include "general expense items or comfort-related items." A telephone for use by passengers to make calls is not a part associated with the functional aspects of the aircraft nor is it part of a safety feature of the aircraft, but rather falls into the category of a non-essential or comfort-related item. Thus, you may not in good faith accept an exemption certificate for charges related to replacement parts for, or the repair of, the telephones.

You also ask if there are other exemptions that might apply to the repair services which A--- provides to its customers. For your assistance in that regard, I am including copies of Regulations 1546 and 1551 which relate to repairs, reconditioning, refinishing and repainting.

In your final question you ask, "Lastly is there a difference in the sales tax treatment of spare parts used in the repair process, labor, and transport services?" Unfortunately, I do not understand the question and without further explanation I am unable to answer it. I am, however, including a copy of Regulation 1628 "Transportation Charges" for your information in the event that by the term "transport service," you mean transportation charges.

I hope that the information I have provided is of assistance. If you have other questions, please write again with a complete explanation of the facts and your questions.

Sincerely,

Sharon Jarvis
Senior Tax Counsel

SJ:rz

Enclosures: Sales and Use Tax Regulations 1593, 1546, 1551, and 1628

cc: Out-of-State District Administrator (OH)