

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 324-2655
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

July 9, 1996

Mr. M--- J. K---
--- --- LLP
XXX --- Street
--- ---, CA XXXXX

Re: Unidentified taxpayer

Dear Mr. K---y:

This is in response to your letter of April 19, 1996, in which you request a "ruling" regarding the application of use tax to the purchase of an aircraft by your unidentified client. The only basis for relief for a person relying on a written opinion from the Board is when that opinion is in response to a written request for advice that discloses all facts, including the identities of the parties. (Rev. & Tax. Code § 6596.) Since you have not identified your client, this letter does not come within the provisions of section 6596. You state:

"Our client, who is a California resident for income tax purposes, recently acquired a used aircraft by means of a tax free exchange as provided by Internal Revenue Code Section 1031. The aircraft will be used for both personal and business purposes. Passage of title and delivery of the aircraft to the client occurred in a state other than California. Federal Aviation Administration registration will indicate that the aircraft is based outside California. In addition, the aircraft will be hangared in a state other than California. It should be noted that the client also maintains residences in states other [than] California.

"The client has already made the first functional use of the aircraft at a location outside California. Sometime in the very near future, the aircraft will undergo exterior refurbishment and interior modifications (hereinafter 'modifications') in a state other than California. (Footnote omitted.) The modifications were not a part of the acquisition of the aircraft. It is anticipated that the modifications will take up to six weeks to complete. Once completed, the aircraft will be flown to

various points within and without the United States. In the course of its travels, the aircraft will likely enter California. However, it is anticipated that the aircraft will not enter the State within the first 90 days after the client's acquisition and first functional use of the aircraft outside the State. It is anticipated that the aircraft will always be hangared outside the State. However, the client may eventually hangar the aircraft at an airport located in California."

You cite subdivision (b)(3) of Regulation 1620 which explains when a person is regarded as purchasing property for use in California. You note that subdivision (b) of Regulation 1593 excludes certain uses (such as modification and repair) from the term "operational use" for purposes of the common carrier exemption. You believe, however, that Regulation 1593 does not apply to the situation you pose since your client is not claiming an exemption for common carrier use under Revenue and Taxation Code section 6366 or 6366.1. We agree. The provisions of Regulation 1620 govern whether the purchaser is regarded as having purchased the aircraft for use in California. Only if the aircraft were regarded as purchased for use in California would the provisions of Regulation 1593 be relevant to the determination of whether the purchaser owed use tax. Furthermore, even if the aircraft is purchased for use in California, the provisions of Regulation 1593 are relevant only if the purchaser is claiming exemption from the otherwise applicable use tax based on common carrier use.

You believe that under the provisions of Regulation 1620, if the aircraft does not enter California prior to the purchase of the modifications and does not enter California within 90 days of the purchase (and first functional use) of the modifications, California use tax will not apply to either the purchase of the aircraft or the purchase of the modifications. We agree with this statement, provided the aircraft and the modifications are used outside California for more than 90 days prior to their first entry into California, excluding time of shipment and time of storage for shipment to California.

You recognize that the test period applicable to the modifications is a separate period from that for the aircraft. That is, if the aircraft is used outside California for 100 days prior to its first entry into California, use tax will not apply to its use in this state. If modifications are performed after 50 days of use outside California, and then the aircraft, with those modifications, enters California 50 days later, the modifications will be presumed to have been purchased for use in California, since they entered within 90 days of purchase, even though the aircraft will not be regarded as having been purchased for use in this state. Thus, use tax will apply to the purchase price of the modifications unless the modifications (i.e., the modified aircraft) is used or stored outside California one-half or more of the time during the six-month period immediately following the first entry of those modifications into California (i.e., date that the aircraft *with* the modifications first entered the state).

Mr. M--- J. K---

-3-

July 9, 1996
325.0002.200

If you have further questions, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl

cc: San Francisco District Administrator