

**STATE BOARD OF EQUALIZATION**

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Executive Director

September 9, 1999

Mr. T--- A. A---  
A--- Enterprises  
XXXX --- Drive  
--- ---, CA XXXXX

Re: Unidentified Taxpayer  
Regulation 1620, subsection (b)(3)

Dear Mr. A---:

This letter is in response to your letters of July 9, 1999 and August 12, 1999 in which you inquire about hypothetical situations. As you know from our previous correspondence, our letters to you commenting on hypothetical situations do not constitute written advice to a taxpayer under Revenue and Taxation Code section 6596, as interpreted by Regulation 1705.

In your letter of July 9, 1999, you state:

“I have a question about how the language in the above referenced regulation [1620], as it relates to storage or use, is applied. The section of the regulation in question states in pertinent part:

*“Property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state.”*

“The regulation clearly states ‘unless the property is used OR stored.’ Using the following example please give me your legal opinion of how the Board will decide in this case.

“In this scenario you should presume the following:

“A. This busy executive must travel to clients locations around the country on an irregular but urgent basis and then return to her office in California.

“B. Possession of the Citation Jet occurred outside California.

“C. First functional use occurred outside California.

“D. That we are dealing with a claim for a use tax exemption by supporting the out-of-state use or storage portion of the six-month test period.

“The attached aircraft log summary represents a pattern of use and storage for your review. I presumed a storage day if the aircraft was parked ‘overnight’ at an airport as I was advised by the Consumer Use Tax Section. The log summary is intended to show the actual day-to-day use of the aircraft as opposed to merely giving you a narration of a pattern.

“The key points about this aircraft are as follows:

“A. During the six month test period, the aircraft was used constantly on out-of-state flights. The total amount of hours flown was 303, and 78.75% of the flight hours (239 hours) were out-of-state.

“B. The aircraft was purchased for out-of-state use and was flown primarily out-of-state, however, the storage time outside California was only 24.18%. (See paragraph above about how storage was calculated.)

“C. The aircraft was not casually used, making in excess of 150 flights on more than 90 different dates.”

In your letter of August 12, 1999, you quote a portion of my letter to you of June 30, 1999, as follows:

“In other words, the six-months test is satisfied if (1) the aircraft is used, but never stored outside of the state of California one-half or more of the time during the six-months period; (2) the aircraft is stored, but never otherwise used outside the state of California one-half or more of the time during the six-month period; or (3) the aircraft is both used and stored outside of the state of California one-half or more of the time during the six-month period.’

You then further state:

“If you substituted ten percent for ‘never,’ would this also satisfy the six-month test?

“Or, are you saying that storage and use are all the same thing when evaluated for the six-month test? If this is true, does this mean ‘storage’ and ‘use’ are not separate issues? Your letter seems to be leading me to the conclusion that ‘time’ is all that matters and it makes no difference whether the activity is flight time, repair time or hangar time.

“Additionally, when researching the Decision and Recommendations, I find instances where storage days are evaluated separate from flight hours when the taxpayer was claiming the aircraft was purchased for out of state use. If my understanding of what you are communicating to me about ‘time’ is correct, why was the staff wasting its efforts evaluating flight hours? Please help me understand this most critical aspect of the principal use test.”

**Assumption:**

In commenting on the hypothetical situations in your two letters, we assume that the purchaser purchased the aircraft from a retailer outside of California, and the aircraft was first functionally used outside of California and brought into California within 90 days after its purchase. The only issue addressed in this letter is whether the property was used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Furthermore, we assume that you are inquiring as to whether California use tax may properly be imposed, not as to whether there is an exemption from use tax if the Aircraft is regarded as purchased for use in California.

**Response:**

I believe my letter of July 30, 1990 responds to the questions in your letter of July 9, 1999. As noted in my letter of July 30, 1999:

“In applying this six-month test, all of the activities of the aircraft during this six-month period may be subsumed under the terms, ‘use or storage.’ If the aircraft is outside the borders of California, it is being used or stored outside of California regardless of whether the use or storage is broken down into time of flight, repair, waiting on the runway, taxiing down the runway, test flights, circling the airport, sitting in a hanger, or any other uses or storage. As noted in an earlier letter, since use *or* storage counts for purposes of this six-month test period, both the use *and* the storage of the property during that six-month period are important and relevant. It is unimportant for this test whether the time is time of use or time of storage; it may be one, or the other, or both.”

In response to your letter of August 12, 1999, time is all that matters for the purpose of applying the six-month test under Regulation 1620(b)(3) to determine whether an aircraft purchased from a retailer outside this state was purchased for use in California. The only question is: in the six-month period following the aircraft’s entry into California, what period of time was the aircraft in California and what period of time was the aircraft outside the state? In making this determination, the issue of flight time vs. repair time vs. hangar time is irrelevant. These issues may become relevant if the aircraft fails the test to determine whether it was purchased for use in California, and the purchaser then seeks an exemption from use tax under Revenue and Taxation Code section 6366 or 6366.1, as further explained in Regulation 1593. I note that Senior Tax Counsel Pat Hart Jorgensen has already written to you discussing both Regulations 1620 and 1593.

I trust that this fully responds to your inquiries.

Very truly yours,

Janice L. Thurston  
Senior Tax Counsel

JLT/cmm

cc: --- District Administrator (---)