

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 327-3400

June 7, 1991

Mr. W--- P. C---
N--- & N---
XXXX --- Avenue, Suite - - XXX
---, California XXXXX

Dear Mr. C---:

I am writing in response to your letters of March 12 and March 25, 1991 asking questions regarding the applicability of California Sales and Use Tax Law to your client's purchase of an airplane. The airplane will be purchases out of California, and will be stored and primarily used out of the state. Following are your questions and our responses to them.

1. "If the aircraft does not land within the State of California or is not otherwise brought into this State within the first ninety (90) days after delivery of the aircraft to our client outside of this State, is our client exempt from assessment of a use tax or other similar tax?"

Unless specifically excluded or exempted from taxation by statute, all gross receipts from retail sales or purchases for use within this state of tangible personal property are subject to either sales or use tax. (Rev. & Tax. Code § 6051.) The use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from any retailer. (Rev. & Tax. Code § 6201.) The legal obligation to pay use tax is on the purchaser rather than the retailer.

If property is purchased out of state, we determine whether the use tax is owing by application of the "first functional use" test and the "principal use" test, as articulated in Regulation 1620(b)(3) which provides as follows:

"PURCHASE FOR USE IN THIS STATE. 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. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.

“... ‘functional use’ means use for the purposes for which the property was designed.”

Under the above-quoted regulation, your client would not be obligated to pay California use tax on an airplane purchased out of state, for use out of state and in fact used exclusively out of state in excess of 90 days from the date of purchase.

2. “If the aircraft is brought into the State of California during the first ninety (90) days after delivery of the aircraft to our client and is used and/or stored outside this State for one-half (1/2) or more of the time during the six (6) month period immediately following its first entry into this State, is our client exempt from assessment of a use tax or other similar tax?”

Under Regulation 1620(b)(3), your client is not obligated to pay use tax on an airplane purchased out-of-state, brought in-state within 90 days of purchase, but used or stored out of state for ½ or more of the six-month period following the airplane’s first entry into California.

3. “Assuming our client is exempt from assessment of a use tax pursuant to either of the [above] tests... and ... subsequent[ly] ... the aircraft is brought into California, stored in California, and primarily used in California, would our client be subject to assessment of a use tax or other similar tax? In other words, does meeting the tests ... result in a permanent ‘safe haven’ from assessment of a use tax or other similar tax?”

Assuming the airplane is purchased out-of-state for use out-of-state, as evidenced by compliance with Regulation 1620(b)(3), your client will not owe use tax by virtue of changed circumstances wherein your client ultimately uses the airplane primarily in California.

4. “In order to meet the [principal use] test ... how is the time of use in the State of California calculated? Specifically, is the time of use in California calculated from the minute that the aircraft crosses the state border into the State of California through and including the time that the aircraft crosses the state border on its departure from this State?”

Principal use in this state includes all use within state boundaries. Thus, the time is measured from entry into the state until departure from the state.

5. “If an aircraft is brought into the State of California within the first ninety (90) days after delivery and first functional use solely for the purpose of having warranty repair at one of the two west coast authorized factory service centers (both are in the State of California), does such entry into California foreclose the exemption from use tax which results from not bringing the aircraft into this State within the first ninety (90) days after delivery?”

In fixing the place of “principal use” of an airplane, the time in California for repair work or storage is included within the six-month test period.

6. “If the aircraft is brought into the State of California during the first ninety (90) days after delivery and is used and/or stored outside this State for one half (1/2) or more of the time during the six (6) month period immediately following its first entry into this State and is brought into the State of California for factory warranty service, does the period of time for such warranty service count toward the calculation of time of use in this State?”

The answer for this is the same as for Question 5.

7. “On the issues addressed herein...can we rely that the Board of Equalization will follow your written opinion in any determination of our client’s exemption from use tax?”

Since you did not identify the taxpayer, this letter does not constitute specific written advice to the taxpayer under Revenue and Taxation Code Section 6596. Rather, this letter constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts.

Please feel free to contact us again if you have further questions.

Sincerely,

Stella Levy
Tax Counsel

SL:cl

bc: --- District Administrator