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December 11, 1992

BURTON W. OLIVER
Executive Director

Mr. D--- O---
R--- F--- P---, Inc.
P. O. Box XX
---, CA XXXXX-XXXX

Re: SR -- XX-XXXXXX

Dear Mr. O---:

This is response to your letter dated October 20, 1992 in which you inquire as to the application of tax to a transfer of ownership of an airplane. You state:

"We currently own a 1/2 interest in a 1979 King Air 2000 airplane. Another California corporation owns the other 1/2 interest. The plane is used for private business by both corporations and is used in a charter business for profit, which is operated by our partner corporation.

"Our desire is to shield R--- F--- P---, Inc., from any liability that might result from flying the plane as a charter or while being flown by either of the two corporations in their normal scope of business. Therefore, we anticipate forming a separate corporation that would have as its only asset a 1/2 interest in the plane.

"It is our understanding that under RTC Section 1595 (b)(4), a transfer of property (1/2 interest in the airplane) from R--- F--- P---, Inc., to a commencing corporation solely in exchange for the first issue stock of the corporations would be exempt from California sales tax."

If R--- transfers its one-half interest in the airplane to the commencing corporation *solely* in exchange for that corporation's first issue of stock, then we agree that the transfer would not be a sale which is subject to sales or use tax. (Reg. 1595(b)(4).) Please pay particular attention to the emphasis on "solely." If R--- receives anything else in consideration for the transfer in addition to the first issue stock, tax applies to that consideration, valued in money. The most

Mr. D--- O---

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common type of such consideration is an assumption by the transferee of liabilities. For example, if R--- has a debt secured by its interest in the airplane and the transferee assumes that debt, tax applies the amount of the debt.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:cl