

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
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(916) 445-8485

December 7, 1989

Mr. M--- P. W---  
T---, M---, J--- & B---  
--- ---  
--- ---, CA XXXXX-XXXX

Dear Mr. W---l:

This is in response to your letter of December 4, 1989 regarding the sales and use tax consequences of the transfer of the beneficial interest in a trust in four similar proposed transactions.

We understand that you discussed these transactions in a recent telephone conversation with Assistant Chief Counsel Gary J. Jugum on November 29, 1989. You asked that we confirm in writing his advice that the subject transactions were not subject to sales or use tax.

Your letter stated:

“Four substantially similar transactions are proposed. Although different parties are involved in the various transactions, the structure of the transactions is the same for each. We will describe one transaction and then specify in what details the others differ.

“C--- F--- (formerly M--- H--- C--- Corporation) entered a trust agreement with M--- T--- Company (‘M---’) in 1986 under which M--- agreed to act as owner trustee in the leveraged lease financing of a[n] --- --- aircraft. C--- F--- was, and currently is, the sole beneficiary of the trust. Pursuant to the trust agreement and other documents, M---, as owner trustee, acquired and leased the aircraft to A---, Inc. under a long-term net lease. M---, in such capacity, was and is the registered owner of the aircraft with the Federal Aviation Administration. To finance this acquisition, M---, solely in its capacity as owner trustee, borrowed a significant percentage of the equipment cost on a nonrecourse basis from --- Bank ---, as loan participant, under a trust indenture and security agreement with C--- N--- Bank, as indenture trustee. A significant portion of the original principal amount of the

loan remains outstanding. A--- ---, as successor to A---, operates the aircraft within California and between California and other points.

“C--- F--- now proposes to transfer all of its beneficial interest in the owner trust to a newly formed domestic subsidiary corporation. At the time of and after the transfer, all of the stock of such subsidiary will be owned by C--- F---, subject to a voting trust arrangement designed to satisfy the Federal Aviation Act requirements referenced below. M---, the owner trustee, will continue to be the registered owner of the aircraft with the Federal Aviation Administration. No change to the lease, trust indenture and security agreement or any other documents (other than a possible amendment to the trust agreement solely to reflect the transfer of the beneficial interest) is contemplated. The principal purpose of the transfer is to comply with Federal Aviation Act requirements following the proposed acquisition by D--- K--- Bank, Limited, of 60 percent of the common stock of the parent corporation of both C--- F--- and C--- Equipment.

“The other three transactions are substantially similar. The second transaction, which relates to a separate trust agreement entered into in 1986, has the same structure and parties as the first, except that the loan participant is C--- Bank O--- K---. C--- F--- proposes to transfer the beneficial interest in the trust in the same manner and with the same principal purpose as in the first transaction described above.

“In the third and fourth transactions, which relate to trust agreements entered into in 1987, C--- E--- is the sole beneficiary under the trust agreement and W--- T--- Company is the owner trustee. Each trust owns one --- aircraft leased to A--- W--- A--- (U.S.A.), which in turn subleases the aircraft to A--- W--- A---. D--- K--- Trust Company is the indenture trustee on behalf of various loan participants. C--- E--- now proposes to transfer all its beneficial interest in each owner trust to C--- L--- Corporation, a wholly owned subsidiary of C--- E---, as a contribution to capital. C--- E---’s stock in such corporation will be subject to a voting trust arrangement designed to satisfy Federal Aviation Act requirements. W--- T--- Company, the owner trustee, will continue to be the registered owner of each aircraft with the Federal Aviation Administration. No change to the lease, trust indenture and security agreement or any other documents (other than a possible amendment to the trust agreement solely to reflect the transfer of the beneficial interest) is contemplated. The principal purpose of the transfer is the same as described above with respect to the C--- F--- transaction.”

We have not had an opportunity to review the trust documents or other documentation relevant to the transactions in question so our response is necessarily equivocal. However, assuming that the “trusts” referred to are valid express private trusts of the type described in California Probate Code Section 82 subsection (a), and are irrevocable, it is our view that the

transfers solely of the beneficial interests in such trusts do not trigger application of California sales or use tax.

We hope this advice will suffice for your purposes. If a more definitive response is needed, please send us all documentation relating to the trusts, as well as all other relevant documentation pertaining to the transactions in question.

Very truly yours,

E. L. Sorensen, Jr.  
Senior Tax Counsel

ELS:jb

cc: Mr. Gary J. Jugum



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1020 N STREET, SACRAMENTO, CALIFORNIA  
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December 11, 1989

Mr. M--- P. W---  
T---, M---, J--- & B---  
Attorneys at Law  
--- --- ---  
--- ---, CA XXXXX-XXXX

Dear Mr. W---:

On December 7, 1989, we responded to your request for opinion as to the application of the California Sales and Use Tax Law to the transfers of the beneficial interests in trusts in four similar proposed transactions. Our response was equivocal due to the fact that we had not had an opportunity to review relevant documentation.

On December 11, 1989, you provided us with a copy of the "Trust Agreement" between M--- H--- C--- Corporation and M--- T--- Company. You stated this agreement was representative of all the trust agreements in question. Also, your letter of December 11, 1989 explained the narrow circumstances under which the owners/trustors could revoke the trusts. In light of this additional information, you requested we issue a more definitive opinion.

We have reviewed the trust documents and your December 11, 1989 letter. Assuming there is no revocation of the trusts prior to the transfers of the beneficial interests in question, it is our opinion that the transfers of those interests are not subject to California sales or use tax.

Very truly yours,

E. L. Sorensen, Jr.  
Senior Tax Counsel

ELS:wk

cc: Mr. Richard W. Kraft  
Mr. Gary J. Jugum