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April 28, 1986

Dear _____,

DOUGLAS D. BELL
 Executive Director

This is in response to your letter of March 17, 1986. We understand that _____ Company is a manufacturer of aircraft parts which is presently contracting with a common carrier for the sale of an "aircraft". The common carrier will purchase the "aircraft" without any engines being furnished by _____ and, instead, will furnish its own engines.

Your letter stated that delivery of the aircraft in California will occur under one of the following three fact patterns:

- "A. The purchaser will take delivery after _____ installs the purchaser's engines onto the aircraft.
- B. The purchaser will take delivery after a contractor other than _____ installs the purchaser's engines onto the aircraft.
- C. The purchaser will take delivery of aircraft with engines being loaned by _____. The purchaser will then have its own engines installed elsewhere and return the loaned engines to _____."

You asked whether under any or all of the foregoing fact patterns, the sale of the "aircraft" would be exempt pursuant to Revenue and Taxation Code Section 6366.

Opinion

Revenue and Taxation Code Section 6366 provides:

"Aircraft sold to common carriers, foreign governments and nonresidents. There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption of aircraft sold to persons using such aircraft as common carriers of persons or property under authority of the laws of this state, of the United States or any foreign government, or sold to any foreign government for use by such government outside of this state, or sold to persons who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state."

The term "aircraft" is defined in the code as follows: "'Aircraft' means any contrivance designed for powered navigation in the air except a rocket or missile" (Rev. & Tax. Code §6274)

You cited Business Taxes Law Guide Annotation 105.0160 as authority for exempting the proposed sale. In that matter, a seller wished to sell and a buyer wished to buy an aircraft. The airframe was sold outright but the installed engines were leased to the buyer with option to purchase at a later date. Our staff concluded that an exempt sale of an aircraft had occurred pursuant to Section 6366.

In the instant matter we are, likewise, of the opinion that the proposed sale of the airframe with installed engines to a common carrier, as described in fact patterns A, B, and C, would qualify as an exempt sale of an aircraft pursuant to Section 6366.

Very truly yours,

E. Leslie Sorenson, Jr.
Tax Counsel