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450 N STREET, SACRAMENTO, CALIFORNIA  
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)  
TELEPHONE (916) 323-3787  
FAX (916) 323-3387

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October 21, 1996

Mr. R--- J. B---  
B--- & P---  
Certified Public Accountants  
XXXX --- Avenue, Suite XXX  
--- ---, CA XXXXX

**Re: Unidentified Taxpayer**

Dear Mr. B---:

This is in response to your letter dated August 23, 1996 requesting an opinion on the application of sales or use tax to your client's transfer of a 50% ownership interest in a Sub-chapter S corporation in exchange for a 50% interest in the Sub-chapter S corporation's sole asset, an aircraft.

You state that your client owns 50% of the outstanding stock of a Sub-chapter S corporation ("Corporation"). The Corporation's sole asset is a Cessna 210 aircraft. We assume that the Corporation is not in the business of selling aircraft. Your client wishes to exchange his 50% stock ownership in the Corporation for a 50% direct interest in the aircraft. The aircraft would then be re-registered showing your client as a co-owner of the aircraft along with the Corporation. You further state that the reason your client desires the transfer is to facilitate the subsequent resale of his 50% interest in the aircraft to a third party, who has no interest in investing in the Corporation. We assume that your client will use the aircraft prior to selling his 50% interest in the aircraft to the third party.

Any person who makes a retail sale of an aircraft is a retailer. (Rev. & Tax. Code § 6275; see also Rev. & Tax. Code §§ 6014, 6015.) Retail sales are subject to either sales or use tax unless exempt. (Rev. & Tax. Code §§ 6051, 6201, 6401.) In this case, use tax applies. (See Rev. & Tax. Code § 6282.)

Your client's sale of the 50% ownership interest in the aircraft to a third party will be subject to use tax, measured by the sale price. The question you present is whether the transfer from the corporation to your client is a sale, and if so, whether it is also subject to tax. Whether there is a sale of tangible personal property depends on whether there is consideration for the 50% interest in the aircraft. Fifty percent stock ownership in the Corporation is something of value at the time of the transfer, and constitutes consideration. Thus, there is a sale and tax applies. The sale price is the value of that consideration and any other form of consideration

(e.g. assumption of liabilities). The use tax is measured by the value of the stock that will be transferred. Unless the circumstances indicate otherwise, since the Corporation's sole asset is the aircraft, the value of the shares transferred would be equivalent to 50% of the value of the aircraft. Thus, use tax would be measured by 50% of the value of the aircraft.

This opinion is based on the facts stated in your letter and the assumptions made above. If our assumptions are incorrect, for example if the Corporation is required to hold a seller's permit by virtue of sales of aircraft, this opinion does not apply. If such is the case and you wish an opinion applicable to the actual facts of the transaction, please write again and describe the transaction with specificity.

Yours very truly,

Charlotte Chyr  
Tax Counsel

CC:cl

cc: Van Nuys District Administrator