

**M e m o r a n d u m****715.0515**

To: Ms. Freda Orendt-Evans  
Out-of-State District (Sacramento) Auditing

Date: August 30, 1991

From: John L. Waid  
Tax Counsel

Subject: Local Tax Exemption (Regulation 1805)  
T--- (SZ OHB XX-XXXXXX)  
A--- W--- A--- (SS OH XX-XXXXXX)

It was a pleasure making your acquaintance over the phone recently. As we discussed, Mr. John Abbott has assigned your memorandum to him of May 15, 1991, to me for a response. You are requesting advice as to the application of the local tax exemption contained in Regulation 1805 to the purchases of certain items by the above airlines for use in their business. You also asked for advice on the general guidelines which the Legal Division uses to determine which items qualify for the exemption and which do not. For the sake of brevity, I have attached a copy of your letter to this memorandum rather than quote extensively from it.

**OPINION**

As you know, Regulation 1805 interprets and implements Revenue and Taxation Code Sections 7202(a)(7), 7202.6(a)(7), and 7203(a)(6), which provide an exemption from local tax for sales of tangible personal property to operators of aircraft common carriers. To qualify for the partial exemptions from local sales tax under Sections 7202 and 7202.6 (hereinafter, "the sales tax exemption"), the property must be (1) used or consumed principally outside the county and outside the project area or city, in which the sale is made; and (2) used directly or exclusively in the use of the aircraft as common carriers of persons or property. To qualify for the partial exemption from local use tax under Section 7203 (hereinafter, the "use tax exemption"), the property must be used directly and exclusively in the use of aircraft for the carriage of persons or property. (Reg. 1805(b).)

The terms "directly and exclusively" imply that the exemption is not available for sales where the purchases are not essential for rendering service. Items which are reasonably necessary for the operation of the aircraft and the sustenance of the passengers in flight can be considered "directly and exclusively used." (Annot. 715.0230.) Thus we consider that sales to air carriers of tangible personal property which is generally useful to the business but not directly and exclusively involved in the carriage of persons and property which is part of the carrier's

business activity are not covered by the exemption. Based on the above standard, we conclude as to the items in your letter as follows:

1. Sodas and Ice. We concur that the exemption is available depending on the use. Non-alcoholic beverages sold by themselves in flight are sold as part of the airline's business activity, but alcoholic beverages are not. The sales tax exemption applies to sales to airlines for qualified consumption, and the use tax exemption applies to such consumption. Because the airline is not consuming but re-selling these beverages, no exemption is available. However, where sodas and ice are sold as components of alcoholic beverages, no separate charge for those items is made. We thus regard the airline as the consumer of those items, so both exemptions apply to sodas served as part of meals but not to sodas and ice sold as components of alcoholic beverages.

2. Alcoholic Beverages. We agree that an airline serving beverages as part of a meal consumes them with no sale taking place, but that they are not directly used in carriage service. No exemption is available. (Annot. 715.0230.)

3. Electronic Flight Information Display System. Since they are not used exclusively in the carriage of persons or property, these monitors are used as part of the airlines' business activity, but are for the benefit of the general public, including ticketed passengers, they are not used "directly and exclusively" in carriage service. No exemption applies.

4. Computer Equipment Used for Reservations and Ticketing. Making, as you did, the assumption that this equipment is used solely for reservations and ticketing, and not for normal office functions, we agree that they are used directly and exclusively in the carriage trade. (See, Annot. 715.0275.)

5. Ticket counters, Sky Cap Stations, Gate Check-In Counters. See response to Item 4.

6. Signboards are posted in airports and so are used in one place. They provide information to passengers, potential passengers, and persons waiting for flights. They thus fill much the same role as printed schedules. While they are useful to the business, they are not essential to it and so do not qualify for either exemption.

7. Menus Used for Meal Selection are not sold to the passengers but are used by the airline, generally at the terminal when the passenger checks in. "Menus, which merely facilitate the selection of food for preparation, are rationally distinguishable from straws, paper cups, and paper napkins or even from paper place mats and soufflé cups which facilitate the sanitary service and consumption of foods." (American Hospital Supply Corp. v. State Board of Equalization (1985) 169 Cal.App.3d 1088, 1093 [215 Cal.Rptr. 744].) Therefore, while a convenience, they are not reasonably necessary for passenger maintenance. No exemption applies.

8. Pillows are useful for the comfort of passengers but not reasonably necessary to their sustenance. No exemption applies.

9. Ticket Envelopes not only hold tickets but also advise the passenger of his flight number and seat assignment. We are of the opinion that this service is reasonably necessary for passenger administration and so directly used in carriage service. The exemption would be available.

10. Polyliner Bags are used to collect passenger discards and trash from the restrooms. Aircraft cleanliness is required by Federal Aviation Administration regulations. The bags are thus directly used in carriage service. It is appropriate to note here that many of the items about which you inquire are used exclusively in the airport. If that airport were in the county where the items were purchased, the sales tax exemption would not be available as the items would not be used or consumed principally outside the project area, city, or county of purchase. However, your reference to the fact that the taxpayers are being audited for possible use tax liability indicates that there is no sales tax problem. Therefore, we have assumed that, as often happens, the items in question were purchased from sellers located outside "airport counties," and so the applicable exemption is the use tax exemption. Thus, these bags would be subject to the exemption.

11. Markers are used for marking tickets but also for general administrative functions. They are thus office equipment not directly used in the carriage of persons or property. (Reg. 1805(b).) The exemption does not apply.

12. Ground Power Units and Air Start Carts are used directly and solely in operating the aircraft – whether that be preparing it for flight, launching, or maintaining it. The exemption would be available.

13. Ground Handling Equipment. Transportation of persons or property to and from the aircraft and for maintaining the aircraft is not transportation that's part of the airline's business activity. Tugs are used to move the aircraft for many reasons, only one of which involves launching it. It may be moved to prepare it for maintenance or for general airfield space management. Therefore, since these items are not used directly and exclusively in the carriage activity, the exemptions would not be available for sales of these items.

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cc: Ms. Victoria Lani Arena (for annotation)

**M e m o r a n d u m****715.0515**

To: Mr. Jack Warner  
Out-of-State, District Principal

Date: December 4, 1991

From: John L. Waid  
Tax Counsel

Subject: Local Tax Exemption for Aircraft  
Common Carriers (Regulation 1805)

Pursuant to your request in your memorandum to Assistant Chief Counsel Gary J. Jugum dated September 10, 1991, he and I reviewed my memorandum to Mrs. Freda Orendt-Evans of the Sacramento Out-of-State District Auditing dated August 30, 1991, regarding the application of the limited exemption from local use tax in Regulation 1805 to various items used by airlines in their business. You attached to your memorandum a copy of a letter by Tax Counsel William Holden to --- --- Airlines dated June 15, 1960, regarding this same exemption contained in the predecessor to Regulation 1805. Unfortunately, when I wrote my memorandum, I was unaware of the existence of Mr. Holden's letter. Since I appeared to be writing on a clean slate, I drew some of my conclusions by analogizing from cases in other states interpreting similar statutes.

Drawing on the guidelines set forth in Mr. Holden's letter, I hereby revise my August 30, 1991, memorandum as follows (by reference to memorandum paragraph):

12. Ground Power Units and Air Start Carts are used in maintenance of the aircraft as well as for flight operations. Regulation 1805 provides that the use tax exemption does not apply to shop equipment. We have previously determined that aircraft engine and systems test equipment do not qualify for the exemption. We thus conclude that the above items are not used directly and exclusively in the carriage trade and so do not qualify for the exemption.

13. Ground Handling Equipment. We have previously determined that tugs for positioning the aircraft; and ground equipment for transporting the baggage to, and loading it on, the aircraft qualify for the exemption. We further conclude that, as potable water is reasonably necessary for the operation of the aircraft, the potable water cart also qualifies.

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cc: Mr. Larry Micheli, Supervisor, Local Tax