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No. 2007/061

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

GUIDELINES ON THE EFFECT OF SALES OR USE TAXES
IN THE VALUATION OF AIRCRAFT

Board staff has initiated a project to develop *Guidelines on the Effect of Sales or Use Taxes in the Valuation of Aircraft*. The purpose of the guidelines is to provide county assessors with assistance in the consideration of sales or use taxes as a component of value in the valuation of aircraft for property tax purposes.

Enclosed is a draft of the proposed guidelines. Interested parties may provide suggested revisions to the guidelines in the form of alternative text. Proposed revisions should be sent by February 15, 2008 to Mr. Larry Gee at larry.gee@boe.ca.gov or mailed to the above address.

After reviewing comments received, staff will meet with interested parties to discuss any outstanding issues. It is anticipated that the guidelines will be presented to the Board's Property Tax Committee for discussion in summer 2008.

All documents for this project will be posted to the Board's website at www.boe.ca.gov/proptaxes/otherprojects07.htm. If you have questions regarding this project, you may contact Mr. Gee at 916-327-5030 or Ms. Sherrie Kinkle at 916-322-2921.

Sincerely,

/s/David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:sk
Enclosure

GUIDELINES ON THE EFFECT OF SALES OR USE TAXES IN THE VALUATION OF AIRCRAFT

Aircraft present special assessment problems. For example, because of their transitory nature aircraft may be acquired from a seller inside or outside of California for use in this state. The resolution of this issue affects not only the situs of the aircraft for property tax purposes, but also the application of sales or use tax. The purpose of these guidelines is to provide county assessors with assistance in the consideration of sales or use taxes as a component of value in the valuation of aircraft for property tax purposes.

OVERVIEW OF THE SALES TAX AND USE TAX PROVISIONS

SALES TAX

Purchases of tangible personal property are subject to sales or use taxes unless the law provides an exception through an exemption or exclusion. The sales tax rate varies statewide.[1] The sales tax is imposed on the retailer for the privilege of selling tangible personal property. Sales of aircraft by licensed dealers are usually subject to sales tax, for which reimbursement is collected at the time of purchase. Purchases from private parties made inside or outside of California for use in the state are subject to the use tax. The use tax rate is the same as the sales tax rate where an aircraft is habitually located.

USE TAX

Use tax applies to the cost of aircraft purchased from licensed dealers outside of California and non-dealers or private parties inside or outside of California for use in this state. In cases where the purchaser has already paid a sales or use tax to another state, a credit is allowed against the use tax owed in California.[2] Use tax is added to most leases of tangible personal property. Private party sales or brokered transactions are normally subject to use tax if the first use of the property occurs in California. Use tax may be added even if the purchaser is not a resident of the state. The sales and use taxes are *mutually exclusive*, which means that either sales tax or use tax applies to a single transaction, but not both. Neither the federal government nor other states collect use tax on behalf of California. It is up to the purchaser to report and submit the use tax amount due to the state. The use tax is due either within one year of the purchase date or by the end of the month following the date the buyer is contacted by the State Board of Equalization (Board). Late payments are subject to interest and penalties.

[1] The statewide base rate is 7.25 percent, with higher rates in locations where voters have approved additional district taxes.

[2] The tax credit cannot exceed the total sales tax of the applicable California state, county, local and district taxes.

A presumption is made that if an aircraft is purchased outside of California, first functionally used outside of California, and brought into California more than 90 days after purchase, the aircraft was not purchased for use in California and use tax does not apply.[3]

EXEMPTIONS FROM USE TAX

There are situations where an exemption from use tax is allowed:

- Certain types of aircraft ownership
- Aircraft parts
- Use of aircraft
- Foreign governments
- Nonresidents
- Repair, retrofit, or modification of aircraft

TYPES OF AIRCRAFT OWNERSHIP

The collection of a tax is prevented if it is prohibited by the United States Constitution or if there is a statutory exemption. Use tax does not apply to the sale, storage, use, or other consumption of aircraft sold, leased, or sold to persons for the purpose of leasing to:

- A common carrier of persons or property whose aircraft operation is sanctioned by a governmental authority
- A foreign government for aircraft use outside of California
- A nonresident who will not use the aircraft in this state[4]

AIRCRAFT PARTS

When tangible personal property becomes a component part of an aircraft because of authorized maintenance, repair, overhaul, or improvement of that aircraft, the charges for such personal property, labor, and services rendered are exempt from tax provided the aircraft will continue to be used by a common carrier of persons or property, a foreign government for use outside of the state, or a nonresident using the aircraft outside of California.[5]

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[3] From October 2, 2004 through June 30, 2007, the presumption that use tax does not apply was made for aircraft purchased outside of California, first functionally used outside of California, and brought into California more than 12 months after purchase.
[4] Sales and Use Tax Regulation 1593, subsection (b) (1).
[5] Sales and Use Tax Regulation 1593, subsection (b) (2).

USE OF AIRCRAFT

In determining whether a purchaser or lessee of an aircraft is using an aircraft as a common carrier of persons or property, only the use of the aircraft by the carrier during the 12-month test period commencing with the first operational use of the aircraft will be considered.[6]

If the aircraft is used by a carrier for more than one-half of its operational use during the test period, then the carrier's principal use of the aircraft will be deemed to be that of a common carrier. Also, the aircraft's gross receipts from use must be above the minimum gross receipts. Each flight of the aircraft is examined separately for purposes of determining common carrier use. For these purposes, a flight is the powered navigation of aircraft from one location on the ground or water to the first point on the ground or water at which the aircraft lands.[7]

A flight qualifies as a common carrier use of the aircraft for purposes of the exemption only if the flight is authorized or permitted by the governmental authority under which the aircraft is operated and involves the transportation of persons or property. Examples of flights that ***do not*** qualify as a common carrier flights for the purposes of the use tax exemption are:

- Student training flights
- Flights to re-position aircraft
- Crop dusting flights
- Flights for parachute jumps or air drops
- Search and rescue flights

Examples of flights that ***do*** qualify as common carrier use when such services are offered indiscriminately to the public or to some portion of the public (and are authorized by governmental authority) are:

- Flights to transport persons or property
- Sightseeing flights
- Flights to transport injured persons to medical facilities

FOREIGN GOVERNMENT

A foreign government will be deemed to have acquired an aircraft for use outside of California if the aircraft is promptly removed from the state, and the foreign government, as owner or lessee, does not return the aircraft to the state within 12 months after its removal from the state.

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[6] Sales and Use Tax Regulation 1593, subsection (c) (1).
[7] Sales and Use Tax Regulation 1593, subsection (c) (1) (B).

NONRESIDENT

A nonresident will be considered as not using the aircraft in California, other than to remove the aircraft from the state, if the aircraft is promptly removed and is not returned to California within 12 months after its removal from the state.

COMMON CARRIER'S MINIMUM GROSS RECEIPTS

The use tax exemption for a common carrier's aircraft is subject to minimum gross receipts.[8] For aircraft sold, leased, or sold for the purpose of leasing from January 1, 1987, to December 31, 1996, it is presumed that a person is not using the aircraft as a common carrier if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed 10 percent of the purchase cost of the aircraft or $25,000, whichever is less. For aircraft sold subsequent to January 1, 1997, it is presumed that a person is not using the aircraft as a common carrier if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed 20 percent of the purchase cost of the aircraft or $50,000, whichever is less. These presumptions may be rebutted by contrary evidence satisfactory to the Board showing that the person is using the aircraft principally as a common carrier for hire.

For purposes of the income requirement, *gross receipts* do not include compensation paid by the owner or lessor of the aircraft, or by related parties,[9] for use of the aircraft as a common carrier. *Contrary evidence* includes sworn, oral, or written testimony to prove that a person is in the business of a common carrier. Such testimony may include evidence that a person was unable to meet the minimum yearly gross receipts requirements because the aircraft was unfit to fly.

REPAIR, RETROFIT, OR MODIFICATION OF AIRCRAFT

The exemption for aircraft brought into this state for repair, retrofit, or modification is applied to aircraft entering California on or after October 1, 2004. [10] The provisions include:

- Aircraft brought into this state for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in the state.
- In the period following completion of the repair, retrofit, or modification of the aircraft, if the registered owner or authorized agent has 25 hours of airtime, then the exemption no longer may be applied. The calculation of airtime logged on the aircraft does not include that time logged for the sole purpose of returning or delivering the aircraft to a point outside of California.

AIRCRAFT AND AIRCRAFT PARTS EXEMPTION CERTIFICATE

For purposes of the proper administration of the sales and use tax and to prevent the evasion of tax, it is presumed that all sales of aircraft are subject to sales or use tax until the contrary is established. This presumption may be rebutted by the seller for any sale of an aircraft or aircraft

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[8] Sales and Use Tax Regulations 1593 subsection (c) (1) (D).

[9] *Related parties* are the owner's or lessor's immediate family, entities in which the owner, lessor, or immediate family have more than one-half interest, and employees of the owner or lessor who use the aircraft on company business.

[10] Sales and Use Tax Regulations 1620 subsection (b) (5) (D).

parts by establishing to the satisfaction of the Board that the gross receipts or sales price from the sale are not subject to the tax, or by obtaining an aircraft or aircraft parts exemption certificate. [11] The certificate shall relieve the seller from liability for the sales tax or use tax collection only if it is taken timely and in good faith. (See Exhibit 1 for a sample of the exemption certificate.)

SALES OR USE TAXES IN THE VALUATION OF AIRCRAFT

VALUATION OF GENERAL AIRCRAFT

Commonly used approaches in the valuation of general aviation aircraft for property tax purposes are the cost, comparative sales, and income approaches. The county assessor should consider all three approaches and, based on the available data, decide which approach is most appropriate. Often, one approach will be more feasible than another.[12]

TAX SITUS OF GENERAL AIRCRAFT

For property tax purposes, general aircraft are assessable at the location where the aircraft is habitually situated. When an aircraft is in various locations throughout California, it is assessable in the place where it spends the greatest amount of ground time. Property Tax Rule 205 provides in part:

> (b) GENERAL AIRCRAFT. Aircraft other than those subject to Revenue and Taxation Code sections 1150 to 1155 [certificated aircraft] have situs for taxation purposes at the airport in which they are habitually situated when not in flight. An aircraft that spends a substantial amount of ground time at each of two or more airports has its tax situs at the airport where it spends the greatest amount of ground time.

If an aircraft establishes tax situs both in California and outside California, apportionment is necessary between California and other jurisdictions.[13] If an aircraft is operated only in California, then the aircraft has established tax situs in California regardless of the owner's domicile. The county in which the aircraft is habitually situated has assessment jurisdiction without apportionment.[14]

ADDITION OF SALES OR USE TAX IN THE VALUATION OF GENERAL AIRCRAFT

General aircraft subject to property taxation would include freight charges and sales or use tax as components of value.[15] Even though sales or use tax may not have been collected when the aircraft was acquired, sales or use tax would be included as part of the total value of the aircraft for assessment purposes. Property Tax Rule 10 provides in part:

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[11] Sales and Use Tax Regulations 1593, subsection (e).

[12] See Assessors' Handbook Section 577, *Assessment of General Aircraft*, for a complete discussion of general aircraft assessment.

[13] *Ice Capades, Inc*. v. *County of Los Angeles* (1976) 56 Cal.App.3d 745; *GeoMetrics* v. *County of Santa Clara* (1982) 127 Cal.App.3d 940.

[14] *Ice Capades, Inc., supra* at 755; Property Tax Rule 205, subsection (b).

[15] *Xerox Corp. v. Orange County* (1977) 66 Cal.App.3d 767.

> (a) In appraising tangible personal property, the assessor shall give recognition to the trade level at which the property is situated and to the principle that property normally increases in value as it progresses through production and distribution channels….

> (b) Except as provided by the following subdivisions, tangible personal property held by a consumer shall be valued at the amount of cash or its equivalent for which the property would transfer to a consumer of like property at the same trade level if exposed for sale on the open market…Full economic cost…includes costs typically incurred in bringing the property to a finished state, including labor and materials, freight or shipping cost, installation costs, sales or use taxes….

VALUATION OF CERTIFICATED AIRCRAFT

Certificated aircraft are valued for property tax purposes under the fleet concept. Using the fleet concept, a county assessor values all aircraft of each particular fleet type. The fleet types are grouped by identical make, model, series, and regional aircraft regardless of age that is flown into California. Under this concept, the types of aircraft that have gained situs in California by their entry into revenue service are valued as a fleet; then only an allocated portion of the entire value of the fleet is ultimately taxed to reflect actual presence in California.[16]

TAX SITUS OF CERTIFICATED AIRCRAFT AND SCHEDULED AIR TAXI OPERATORS

Property Tax Rule 202, *Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators*, provides that the tax situs is as follows:

> (a) AIR TAXIS. An aircraft whose owner on lien date used it in a scheduled air taxi service at any time during the representative period selected…or which has been purchased for scheduled air taxi service but not yet put into such service and not yet used in any other service, is assessable under sections 1150 to 1156 of the Revenue and Taxation Code….[17]

> (b) SITUS. Aircraft of United States registry operated by certificated air carriers… or scheduled air taxis… and flown in intrastate, interstate, or foreign commerce shall be deemed to be situated only in those taxing agencies…in which the aircraft normally makes physical contact. The physical contact must be intentional rather than by accident or as the result of an emergency, and it must involve embarking or disembarking of crew, passengers, or freight….

Certificated aircraft taken out of scheduled service are assessable as general aircraft if:

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[16] See Assessors' Handbook Section 570, *Assessment of Commercial Aircraft*, for a complete discussion of commercial aircraft assessment.

[17] For valuation purposes, scheduled air taxi service is treated the same as certificated aircraft.

1. The aircraft is taken out of scheduled service and grounded in the county prior to the lien date.[18]

2. The aircraft is not flown during the representative period.[19]

3. The aircraft has an established tax situs in California and is solely situated in or habitually situated in the county on the lien date.[20]

ADDITION OF SALES OR USE TAX IN THE VALUATION OF CERTIFICATED AIRCRAFT

As a general rule, commercial aircraft subject to property taxation would include freight charges and sales or use tax as components of value.[21] If sales or use tax is applicable to similar consumers using aircraft at a similar trade level, then sales or use tax should be included in the assessed value even though sales or use tax was not paid when the aircraft was acquired.[22] The exceptions to the general rule are common carrier aircraft and federal government aircraft.

The exceptions are based on the concept that sales to common carriers and the federal government as consumers are never subject to sales or use tax.[23] For sales or use tax to be excluded from property tax purposes, both the owner and the aircraft usage must qualify under the common carrier exemption of the Sales and Use Tax Law on each lien date for which exclusion of sales or use tax as an element of property tax valuation is sought. If either of these conditions is not met on the lien date, then sales or use tax should be included in a cost-based valuation approach as a component of the full economic cost.

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[18] Revenue and Taxation Code section 1150.
[19] Revenue and Taxation Code section 1153.
[20] Revenue and Taxation Code section 220 and Property Tax Rule 138 provide an exception for aircraft solely in California to be repaired, overhauled, modified, or serviced.
[21] *Xerox Corp. v. Orange County* (1977) 66 Cal.App.3d 767.
[22] Property Tax Rule 10.
[23] Exclusion of sales and or use tax from property tax valuation is appropriate only where all of the property owners at a particular trade level are exempt from tax.

S A M P L E

AIRCRAFT OR AIRCRAFT PARTS EXEMPTION CERTIFICATE

I HEREBY CERTIFY: That the aircraft identified below will be used:

[ ] Principally as a common carrier* of persons or property under authority of the laws of California, of the United State, or of any foreign government; or

[ ] Outside California by a foreign government; or

[ ] Outside California by a nonresident of California which aircraft was not used in this state other than the removal from California.

That the purchase of all tangible personal property which I shall purchase from

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is exempt from tax under section 6366 or 6366.1 of the Revenue and Taxation Code and Regulation 1593. The identification numbers of all aircraft purchased under this certificate are listed below. Until this certificate is revoked in writing, all other property purchased from the seller consists of tangible personal property to become a component part of aircraft in the course of repair, maintenance, overhaul, or improvement of same in compliance with Federal Aviation Administration requirements, or United States military equivalent, which aircraft will be used by the purchaser or the purchaser's lessee in a manner qualifying for exemption under section 6366 or 6366.1 and under Regulation 1563. (The purchaser issuing this certificate can revoke it as to a particular purchase by clearly indicating on a purchase order that the purchase is not exempt under either section 6366 or 6366.1 or under Regulation 1593.)

I UNDERSTAND that in the event any such property is used in any manner other than as specified above, I am required by Sales and Use Tax Law to report and pay any applicable sales or use tax.

*NOTE: Revenue and Taxation Code section 6366 creates a rebuttable presumption that an aircraft is not principally used as a common carrier if the owner's or lessor's annual gross receipts from such operations do not exceed 20 percent of the purchase price of the aircraft or fifty thousand dollars ($50,000), whichever is less. Amounts received for use of the aircraft as a common carrier from the owner or lessor of the aircraft or related parties or employees of the owner or lessor, are excluded form gross receipts for purposes of this presumption.

Identification Numbers of Aircraft Purchased under this Certificate:

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Date Certificate Given:____

Purchaser____

(Company Name)

Address____

Signature____

(Signature of Authorized Person)

Title____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any)____