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June 21, 1999

VIA FACSIMILE AND U.S. MAIL

Honorable Dick Frank
San Luis Obispo County Assessor
County Government Center, Room 100
San Luis Obispo, California 93408-2070

Re: Request for Opinion Letter - Assessment of Certificated Aircraft

Dear Mr. Frank:

This is in response to your letter of May 18, 1999 addressed to Assistant Chief Counsel Larry Augusta in which you pose five questions concerning the assessment of aircraft owned by a commercial air carrier, which aircraft had been taken out of scheduled service and replaced with the same type of aircraft. Based on the information presented, the first of these aircraft were grounded beginning April 2, 1996 and the last one was grounded on December 5, 1996. They all remained in San Luis Obispo County through the January 1, 1997 lien date but were not flown during the representative period which commenced on January 5, 1997.

As set forth below, the subject aircraft were assessable as general aircraft in San Luis Obispo County on the January 1, 1997 lien date provided they had an established tax situs in California and were solely situated in or habitually situated in the county on the lien date. In response to your specific questions concerning Revenue and Taxation Code section 1152, subdivision (c), that section is inapplicable because it governs assessment of "certificated aircraft." Under the facts presented, these aircraft ceased being "certificated aircraft" prior to the January 1, 1997 lien date; once taken out of scheduled service, the subject aircraft became general aircraft. General aircraft that have spent their time in one county are assessed in that county. General aircraft that have spent time in more than one county in California are assessed in the county where they have been habitually situated i.e. where they have been situated for the longest period of time. However, the assessment of general aircraft that have spent time out of state must be allocated based on tax situs. Below quoted are the five questions raised in your letter.

Law and Analysis

1. Are the 19 "grounded" aircraft taxable in San Luis Obispo County for the January 1, 1997 lien date?

The 19 "grounded" aircraft are taxable in California for the January 1, 1997 lien date, assuming that tax situs has been established in California; however, there are not sufficient facts presented to determine whether all the aircraft are 100 percent assessable in San Luis Obispo County. In California, all property is taxable unless otherwise provided by the California Constitution or federal law. As you know, "certificated aircraft" are assessed according to an allocation formula known as the representative period pursuant to section 1152 and related sections of the Revenue and Taxation Code. Section 1150 provides in pertinent part that "[a]s used in this article, "certificated aircraft" means aircraft operated by an air carrier or foreign air carrier engaged in air transportation . . ." Thus, while the subject aircraft were in service and being operated by the air carrier, they would be considered certificated aircraft. However, once they were taken out of service in 1996 and grounded, they became "general aircraft". As general aircraft they would be assessable as personal property on the January 1, 1997 lien date.

General aircraft that have spent their time in one county are assessed in that county. General aircraft that have spent time in more than one county in California are assessed in the county where they have been habitually situated i.e. where they have been situated for the longest period of time. However, the assessment of general aircraft that have spent time out of state must be allocated based on tax situs.

2. Would the 19 grounded (or "retired") aircraft be 100% assessable in San Luis Obispo County as seems to be indicated on page three of your letter dated February 17, 1983?

As indicated in the answer to question 1, above, the subject aircraft are assessable in San Luis Obispo County only if it is determined that they have spent all their time in San Luis Obispo County or that they are "habitually situated" in that county. Under Property Tax Rule 205, subdivision (b), general 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.

Rule 205(b) presupposes that those aircraft to which the rule applies have an established tax situs in California. The term "habitually situated" denotes the local county tax situs among the counties within California, the airport at which the aircraft is usually present when not in flight. Thus, once California tax situs has been established, the aircraft is "habitually situated" at the airport of the local jurisdiction where the aircraft spends its ground time. If the aircraft spends a

substantial amount of time at multiple airports, it is "habitually situated" at the airport where it spends the most ground time.

3. If not 100% assessable by San Luis Obispo County, does Revenue and Taxation Code, Section 1152, paragraph (c) apply to these 19 aircraft in excluding all ground time in excess of 168 hours attributable to these aircraft?

As stated above, section 1152 applies only to assessment of certificated aircraft and, thus, is inapplicable in this instance because these are general aircraft.

4. If this code section is not applicable, how should the value of these aircraft be allocated under current law?

For general aircraft, apportionment of assessment depends upon domicile and situs. For aircraft maintained and operated solely within California, they have an established tax situs in California, and the appropriate California county has assessment jurisdiction without apportionment.¹ Of course, aircraft having mere transitory contact with California do not have either an established domicile or situs in this state and, hence, are not subject to personal property tax here.

For aircraft that are domiciled in California, have an established tax situs in California and have tax situs in another state or states, the appropriate California county or counties may assess portions of values reflecting the periods that the aircraft are not present in other states where they have established tax situs. Where an aircraft is domiciled in another state and has tax situs in that state and in California, value should be apportioned to California for only the time spent in California. Ice Capades, Inc. v. County of Los Angeles (1976) 56 Cal.App.3d 745, 755. Finally, if an aircraft has domicile and tax situs in California but operates for some part of the year in a foreign country, then the value is apportioned to California for only the time spent in California. GeoMetrics v. County of Santa Clara (1982) 127 Cal.App.3d 940.

With regard to the subject aircraft, if they were domiciled and had tax situs in California, apportionment of the assessment depends upon whether the aircraft were potentially subject to taxation in another state or states. Once tax situs in another state has been shown, then the aircraft would be exempt from taxation in California for the portion of time that they were subject to taxation in the other state. If the aircraft had domicile in another state and tax situs in California and elsewhere, then they are assessable by the appropriate California county for the portion of the time that they are present in California.

¹ Answers to Questions 1 and 2 and Property Tax Rule 205(b).

5. Does the advice the SBE provided to this county on items d. and e. on page 3 of its letter of February 17, 1983 conflict with Revenue and Taxation Code, Section 1152 and Property Tax Rule 202?

No. On facts quite similar to those under discussion here, that letter reached the same conclusions as set forth above regarding the assessment of aircraft retired from service but remaining in the county beyond the following lien date. As stated above, the retired aircraft are considered general aircraft and section 1152 and Property Tax Rule 202, its interpretive regulation, are inapplicable.

Very truly yours,



Louis Ambrose
Tax Counsel

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cc: Mr. Richard C. Johnson (MIC:63)
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