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March 31, 1999

Honorable Joan C. Thayer, Assessor
Marin County Assessor-Recorder
P.O. Box C Civic Center
San Rafael California 94913

Attn: Sean H. Webb
Auditor/Appraiser, Marine & Aircraft Section

Re: Aircraft Assessments and Taxation

Dear Mr. Webb:

This is in response to your letter dated October 26, 1998, to Mr. Lloyd Allred of the Board of Equalization. Your letter was referred to the Board's legal section. In that letter, you enclose two management agreements and inquire as to whether or not, in our opinion, the two planes referenced therein are exempt from property taxation under section 5303(b)(2) of the Revenue and Taxation Code. As set forth in more detail below, our answer is that the planes cannot be exempt from property taxation under section 5303(b)(2) since that section does not provide such an exemption.

The Code of Revenue and Taxation addresses the assessment and taxation of airplanes in two separate places. One, the assessment and taxation of "aircraft" is addressed at sections 5301-5456; and two, sections 1150-1156 address the allocation of property taxes between different tax agencies for "certificated aircraft." Section 1150 defines "certificated aircraft" as follows:

As used in this article, "certificated aircraft" means aircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in subdivisions (3), (5), (10), and (19) of Section 101 of Title I of the "Federal Aviation Act of 1958" (P.L. 85-726; 72 Stat.731), while there is in force a certificate or permit issued by the Civil Aeronautics Board of the United States, or its successor, or a certificate or permit issued by the California Public Utilities Commission, or its successor, authorizing such air carrier to engage in such transportation.

The Board's Property Tax Rule 202 further elaborates the special property tax allocation formula for the aircraft of certificated air carriers (within the meaning of section 1150), which aircraft is "flown in intrastate, interstate, or foreign commerce." As to aircraft that is not flown by certificated air carriers, Property Tax Rule 205(b) provides as follows:

Aircraft other than those subject to Revenue and Taxation Code sections 1150 to 1155 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.

The question posed in your letter, however, is whether or not the two referenced planes are exempt from the property tax under section 5303(b)(2). Under section 5303(b)(2), the word "aircraft" is defined so as not to include:

Aircraft operated exclusively by an air carrier or foreign air carrier as defined in subdivisions (3) and (19) of Section 101 of Title 1 of the "Federal Aviation Act of 1958" (P.L. 85-726, 72 Stat. 731) engaged in air transportation as defined in subdivision (10) of the same section while there is in force a certificate or permit issued by the Civil Aeronautics Board of the United States, or its successor, or a certificate or permit issued by the California Public Utilities Commission, or its successor, authorizing such air carrier to engage in such transportation. (Emphasis added.)

Contrary to the apparent beliefs of the lessor-taxpayers that you reference in your letter, however, section 5303(b) does not provide a property tax exemption to those specified items of personal property excluded from the definition of "aircraft." That statute says nothing about an exemption from taxation; and the fact that the referenced planes do not constitute "aircraft" for purposes of sections 5301-5456 does not either imply or raise an inference that the planes are either immune or exempt from taxation. Furthermore, under the California constitution, all property is taxable unless specifically exempted. (Cal. Const. art. XIII, §1.) Finally, if you compare the language of section 1150 with the language of section 5303(b)(2), it can clearly be seen that any airplane excluded from the definition of "aircraft" under section 5303(b)(2) must necessarily be included in the definition of "certificated aircraft" under section 1150.

There is, in fact, no exemption for the aircraft owned or used by certificated air carriers, so long as the aircraft has a California tax situs and does not qualify for any other exemption from property taxation.¹ The property tax exemptions that are specifically provided for aircraft are set forth in (i) section 5331, "Aircraft owned by United States or foreign government" and (ii)

¹ Nevertheless, to the extent that either or both of the two planes in question constitute "certificated aircraft" and to the extent that such certificated aircraft have been present in other tax jurisdictions, a county's assessment of the certificated aircraft may have to be reduced on a pro rata basis per the special allocation rules set forth in section 1150 et seq. and Rule 202.

section 5332, "Aircraft owned by this State or political subdivision." The exclusion from the definition of "aircraft" found in section 5303(b), on the other hand, simply related to a special tax rate for "general aircraft" that existed prior to the passage of Proposition 13.

Prior to Proposition 13, the California legislature had implemented a special property tax rate of one and one-half percent for "general aircraft." Pursuant to section 5303, however, the special tax rate did not apply to (i) rockets and missiles, (ii) federal or state certificated air carriers, and (iii) air taxis. (Ehrman & Flavin, Taxing California Property, 3rd Ed. at p. §9:06.) Subsequent to the passage of Proposition 13, however, all ad valorem tax rates are limited to 1 percent. Thus, general aircraft (and certificated aircraft) are now taxed at 1 percent; and the prior special tax rate of one and one-half percent is no longer applicable. (*Id.*)

Neither Property Tax Rule 202 nor the sections of the Revenue and Taxation Code having to do with "certificated aircraft" (§§1150-1156) impose a different property tax on the fair market value of the certificated aircraft operated by an airline or air carrier. Instead, such provisions merely provide a special "allocation formula to determine the proportionate extent to which certificated aircraft are situated, for taxing purposes, in different taxing jurisdictions." (*American Airlines, Inc. v. County of San Diego* (1990) 220 Cal.App.3d 164, 166.) The reasons for these special provisions for "certificated aircraft" are explained in *American Airlines v. San Diego*, *supra* 167-168:

The reasons for these special rules for certificated aircraft is clear. Because they are operated by air carriers engaged in air transportation, certificated aircraft regularly fly in and out of California and the various California counties having major airports. Under federal due process and commerce clause considerations, personal property taxes on such aircraft must be fairly apportioned.... Sections 1150 to 1156 are designed to provide a uniform formula for apportioning such taxation among different taxing jurisdictions.

There is nothing in the language of sections 1150 to 1156 which imposes a tax on the "operation" of certificated aircraft.... [S]ection 1150 is merely definitional. It does not by its terms impose a tax; it defines the aircraft to which sections 1151 to 1156 apply. The latter sections... provide a formula to determine, for purposes of property taxation, the extent to which certificated aircraft are situated in different taxing agencies.

As stated in Taxing California Property, *supra* at §§7:06-7:07:

General aircraft (i.e., aircraft that are not federally or state certified air carriers and unscheduled air taxis) are taxed at the location of the airport or hangar where they are usually kept, even if they are absent on the lien date. Where the aircraft spends a substantial amount of ground time at two or more airports, its situs is considered to be where it spends the most time....

Since the decision in 1954 by the United States Supreme Court in *Braniff Airways, Inc. v. Nebraska State Board of Equalization & Assessment*, apportionment has been the accepted and approved method of taxing aircraft engaged in "interstate" flight operations. Apportionment has been approved also by the California courts.

California has codified the rule of apportionment in the Revenue and Taxation Code and made it applicable to both interstate and intrastate certificated air carriers and scheduled air taxis. Certificated aircraft are considered to have a situs in California only to the extent that they are normally physically present in the state.

In conclusion, as indicated above, section 5303(b)(2) does not provide an exemption from property taxation. Thus, regardless of whether or not either or both of the two referenced planes have been leased to licensed air carriers, there is no applicable exemption. Nevertheless, if either or both of the two planes fall within the ambit of the provisions of section 1150 et seq. and Rule 202, then you must apply the special allocation formula set forth therein to proportionately reduce or allocate the assessment in your county.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

If you have any questions, please call me at (916) 324-6593.

Sincerely,



Robert W. Lambert
Senior Tax Counsel

RWL:jd

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cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70

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