

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

**To:** Mr. Dean R. Kinnee, Chief (MIC:64)  
County-Assessed Properties Division

**Date:** July 6, 2012

**From:** J.K. McManigal, Jr.  
Senior Tax Counsel

**Subject:** *Exemption for Aircraft of Historical Significance  
Assignment No. 12-090*

This is in response to your April 24, 2012, memorandum wherein you inquired concerning the meaning of "replica" in the definition of "aircraft of historical significance" set forth in subdivision (d) of Revenue and Taxation Code<sup>1</sup> section 220.5, the aircraft of historical significance exemption. Specifically, you ask whether an aircraft that is a "replica" of a heavier than air powered aircraft must be 35 years or older in order to qualify for the exemption, or whether an aircraft that is a recently created "replica" may qualify for the exemption. For the reasons hereinafter set forth, in our view, a "replica" aircraft as used therein means a replica heavier than air powered aircraft that is 35 years or older.

**Law & Analysis**

We first note that in interpreting statutes, the fundamental premise of statutory interpretation is to ascertain and effectuate the legislature's intent. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) Courts begin by examining the language of the relevant provisions. (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.) And where legislative intent is expressed in unambiguous terms, the statutory language is conclusive; "no resort to extrinsic aids is necessary or proper." (*Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.)

Subdivision (d) of section 220.5 states:

For purposes of this section "aircraft of historical significance" means any aircraft that is an original, restored, or replica of a heavier than air powered aircraft *that is 35 years or older* or any aircraft of a type or model of which there are fewer than five in number known to exist worldwide. (Emphasis added.)

We believe this statute is unambiguous. In order to meet the definition of "aircraft of historical significance," an aircraft must be original, restored, or a replica of a "heavier than air powered aircraft," and that aircraft must be 35 years or older. Because this provision is expressed in clear and unambiguous terms, it is neither necessary nor proper for the court to consider extrinsic aids to interpretation, such as legislative history. (*Wunderlich v. County of Santa Cruz* (2009)

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<sup>1</sup> All further statutory references are to the Revenue and Taxation Code, unless otherwise specified.

178 Cal.App.4th 680, 695 citing *Equilon Enterprises, LLC v. Consumer Cause, Inc.*, *supra*; see also *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, (2005) 133 Cal.App.4th 26, 30.) However, we have consulted the legislative history, and it fully supports this view.

Section 220.5 was added by Stats. 1987, Ch. 267 (SB 95), in effect January 1, 1988 but applicable to the 1987-88 fiscal year and fiscal years thereafter. Both SB 95, and its predecessor, SB 971<sup>2</sup> provided a definition of "aircraft of historical significance." We note that SB 971, as introduced, however, left out the age and existing aircraft requirements in the definition of "aircraft of historical significance." It read:

For purposes of this section, "aircraft of historical significance" means any aircraft which is an original, restored, or replica of a heavier than air powered aircraft which is \_\_\_\_\_ years or older or any aircraft of a type or model of which there are fewer than \_\_\_\_\_ in number known to exist worldwide.

It was amended in Assembly July 15, 1985 to insert those provisions, and as enrolled, subdivision (d) of proposed section 220.5 stated:

For purposes of this section, "aircraft of historical significance" means any aircraft which is an original, restored, or replica of a heavier than air powered aircraft which is 35 years or older or any aircraft of a type or model of which there are fewer than five in number known to exist worldwide.<sup>3</sup>

This is the same version of subdivision (d) that was enacted upon the governor's signing of SB 95 in 1987. Therefore, it was clearly understood that to qualify for exemption, an aircraft would have to meet an age limit requirement. The Assembly Committee on Revenue and Taxation, the Department of Finance, and the bill's proponents all recognized this fact. After the 35 years or older requirement was inserted, the August 19, 1985 Assembly Committee on Revenue and Taxation Hearing Report stated that SB 971 would exempt an aircraft if it was at least 35 years old or was an endangered species;<sup>4</sup> Department of Finance bill analysis also stated the requirement that a qualifying aircraft be 35 years or older;<sup>5</sup> and the bill's proponents wrote to Governor Dukmejian, after his veto, emphasizing that aircraft would qualify for the exemption if they were 35 years or older.<sup>6</sup>

Accordingly, "any aircraft that is an original, restored, or replica of a heavier than air powered aircraft that is 35 years or older" was and has been construed to mean an original heavier than air powered aircraft that is 35 years or older.

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<sup>2</sup> SB 971 was enrolled but vetoed by Governor Deukmejian.

<sup>3</sup> The only differences between subdivision (d) of section 220.5 as enrolled in 1985 and subdivision (d) of section 220.5 as enacted in 1987 are the substitutions of "that" for "which" after "aircraft" in both places therein.

<sup>4</sup> Assem. Com. on Revenue and Taxation, Hearing Report for Sen. Bill No. 971 (1985-1986 Reg. Sess.) as amended July 15, 1985, attached as Exhibit A.

<sup>5</sup> Dept. Finance, Analysis of Sen. Bill No. 971 (1985-1986 Reg. Sess.) as amended July 15, 1985, attached as Exhibit B.

<sup>6</sup> Willis M. Allen, Jr., Noel Bridge Income Property Co., letter to Governor Deukmejian re veto of SB 971 (1985-1986 Reg. Sess.), attached as Exhibit C.

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Attachments

cc:	Mr. David Gau	MIC:63
	Mr. Mike Harris	MIC:64
	Ms. Ladeena Ford	MIC:64
	Ms. Margie Wing	MIC:64
	Ms. Terry Leung	MIC:64
	Mr. Todd Gilman	MIC:70