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November 5, 1997

Honorable William C. Greenwood, Assessor
County of Fresno, Rm. 201, Hall of Records
P.O. Box 1146
Fresno, CA 93715-1146

ATTN: Mr. , Chief Auditor-Appraiser

RE: Aircraft change of situs between lien date and start of fiscal year.

Dear Mr. Greenwood:

In your letter of September 4, 1997 you requested our opinion on the taxable situs of an individually owned aircraft that had been operating in your county for the years 1991 through 1994 and for which all personal property taxes had been paid. In 1995 the taxpayer filed the Aircraft Property Statement indicating that the aircraft was present in the county on the lien date. However in May of that year the aircraft was sold to a person in another state and removed from the county.

Your question is: on the above facts, does the aircraft have situs for personal property tax purposes in Fresno County for lien date 1995? Although there was room for some argument because of seemingly conflicting rulings of the California Appellate Courts, thanks to a recent decision we can confidently respond **yes** to your question.

In **Seegmiller v. County of Nevada [53 Cal.App.4th 1397, Mar 31, 1997]** the court held that the change in situs of a machine shop from Truckee, California to Reno, Nevada in the month of August (after the start of a new fiscal year) did not result in pro rata cancellation of California Personal Property Taxes for the remainder of the fiscal year in question. The following three paragraphs are directly on point and have been extracted from the court's opinion:

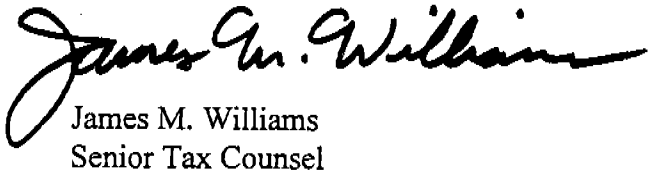
> Seegmiller's "multiple taxation" argument proceeds on the unwarranted assumption that the 1994-1995 tax bill operates prospectively only, i.e., that the County is exercising the power to tax in return for future benefits and protection provided to the taxpayer during the upcoming tax year. **Not so.**

> The tax lien date (here March 1) is simply a practical method for determining that the taxpayer enjoyed the benefit of governmental services **during the year preceding the assessment**. This was made clear in *City of Bayonne v. International Nickel Co. (1968) 104 N.J.Super. 45, app. dismissed (1969) 396 U.S. 111* in which a New Jersey appellate court rejected a parallel claim but with even stronger facts favoring the taxpayer.
>
> In *Bayonne*, a taxpayer which removed all its personal property from the state in 1964 was assessed a property tax bill for 1965. The taxpayer contended that since it removed all its property before the tax year in question began, levying of the tax would violate the due process clause. (The New Jersey Court disagreed and held to the contrary.)

The departure of your aircraft matches the timing of the removal of the personal property in the New Jersey case upon which **Seegmiller** relies as precedent, so we can reasonably conclude that it would also be controlling for your situation. However, we do have one *caveat* since your letter was not explicit on the type and use of the taxpayer's aircraft. A commercial aircraft engaged in interstate commerce would be subject to the Commerce Clause of the United States Constitution which would invoke various other legal constraints that would render a different result.

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.

Very truly yours,



James M. Williams
Senior Tax Counsel

JMW:jd
precednt/situs/1997/97001.jmw

cc: Mr. Dick Johnson, MIC:63
Mr. Don Jackson, MIC:61
Ms. Jennifer Willis, MIC:70