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December 14, 2010

No. 2010/068

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

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

In Letter To Assessors 2007/061, Board staff distributed a draft of proposed *Guidelines on the Effect of Sales or Use Taxes in the Valuation of Aircraft* and asked interested parties for their comments and suggestions on the *Guidelines*. Subsequent to receipt of comments, the project was delayed because of pending litigation in Los Angeles County. That litigation has now been resolved.

Enclosed is a second draft of the *Guidelines* which incorporates many of the comments and suggestions received regarding the first draft. Interested parties may provide suggested revisions, in the form of alternative text, to the *Guidelines.* Proposed revisions should be sent by February 18, 2011 to Ms. Sherrie Kinkle at slkinkle@boe.ca.gov or mailed to the above address.

After reviewing comments received, staff will meet with interested parties to discuss any outstanding issues. Subsequently, the *Guidelines* will be presented to the Board's Property Tax Committee for discussion.

All documents regarding this project will be posted to the Board's website at www.boe.ca.gov/proptaxes/salestax_aircraft.htm. If you have questions regarding this project, you may contact Ms. Kinkle at 916-274-3363.

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

December 2010

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

Aircraft present special assessment problems because of their transitory nature. Whether an aircraft is acquired from a seller inside or outside of California for use in this state affects not only the situs of the aircraft for property tax purposes, but also the application of sales or use tax in arriving at the value of the aircraft. These guidelines are to provide county assessors 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 from the buyer. Purchases of aircraft 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 of the locality or district where the aircraft is habitually located.

USE TAX

Use tax applies to aircraft that are purchased for use in this state from licensed dealers outside of California and non-dealers or private parties inside or outside of California. 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 to the State Board of Equalization (Board) the use tax amount due. 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 Board. Late payments are subject to interest and penalties.[3]

Pursuant to section 6248, a rebuttable presumption is made that if an aircraft is purchased outside of California on or after January 1, 2010, and is brought into California within 12 months from

[1] The statewide base rate is 8.25 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.
[3] Revenue and Taxation Code section 6591.

the date of its purchase, was acquired for storage, use, or other consumption in California, it is subject to use tax if any of the following occurs:[4]

1. The aircraft was purchased by a California resident. A closely held corporation or limited liability corporation shall be considered a California resident if 50 percent or more of the share or membership interests are held by shareholders or members who are residents of California.[5]

2. The aircraft was subject to property tax in California during the first 12 months of ownership.[6]

3. If purchased by a nonresident of California, the aircraft is used or stored in California more than one-half of the time during the first 12 months of ownership.

The rebuttable presumption may be controverted by documentary evidence that the aircraft was purchased for use outside of California during the first 12 months of ownership. The evidence may include, but is not limited to, evidence of proper registration of the aircraft outside of California.[7] For aircraft purchases prior to October 1, 2008, the following table shows the appropriate test period to use when determining the application of use tax to out-of-state purchases of aircraft.

PURCHASE DATE	TEST PERIOD
Prior to October 2, 2004	90-Day Test
October 2, 2004 – June 30, 2007	12-Month Test
July 1, 2007 – September 30, 2008	90-Day Test
On or after October 1, 2008	12-Month Test

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

[4] Prior to October 1, 2008, the aircraft needed to be purchased 90 days before being brought into California or it was subject to use tax.
[5] Revenue and Taxation Code section 6248, subdivision (a)(1).
[6] Revenue and Taxation Code section 6248, subdivision (a)(3).
[7] Revenue and Taxation Code section 6248, subdivision (b).

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 (other than to remove the aircraft from California)[8]

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.[9]

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.[10]

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, as discussed below, the aircraft's gross receipts from use must be above certain thresholds established by regulation. 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.[11]

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 common carrier flights for the purposes of the use tax exemption are:

- Student training flights
- Flights to re-position aircraft

[8] Sales and Use Tax Regulation 1593, subdivision (b)(1).
[9] Sales and Use Tax Regulation 1593, subdivision (b)(2).
[10] Sales and Use Tax Regulation 1593, subdivision (c)(1).
[11] Sales and Use Tax Regulation 1593, subdivision (c)(1)(B).

- Crop dusting flights
- Flights for parachute jumps or air drops
- Search and rescue flights[12]

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[13]

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.

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.[14]

COMMON CARRIER'S MINIMUM GROSS RECEIPTS

The use tax exemption for a common carrier's aircraft is subject to minimum gross receipts.[15] 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 [16] for use of the aircraft as a common carrier.[17] 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 on or after 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

[12] Sales and Use Tax Regulation 1593, subdivision (c)(1)(C)1.
[13] Sales and Use Tax Regulation 1593, subdivision (c)(1)(C)2.
[14] Prior to September 30, 2008, the aircraft was subject to a 90-day provision. Sales and Use Tax Regulation 1593, subdivision (c)(3).
[15] Sales and Use Tax Regulations 1593, subdivision (c) (1) (D).
[16] *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.
[17] Sales and Use Tax Regulation 1593, subdivision (c)(1)(F).

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.

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.[18]

REPAIR, RETROFIT, OR MODIFICATION OF AIRCRAFT

An aircraft, subject to the 12-month provisions of Revenue and Taxation Code section 6248, that is brought into California for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in California.[19]

However, these provisions do not apply if during the period following the time the aircraft is brought into California and ending when the repair, retrofit, or modification of the aircraft is complete, more than 25 hours of airtime are logged on the aircraft by the registered owner of that aircraft or by an authorized agent operating the aircraft on behalf of the owner. The calculation of airtime logged on the aircraft does not include airtime following the completion of the repair, retrofit, or modification of the aircraft that is logged for the sole purpose of returning or delivering the aircraft to a point outside of California.[20]

AIRCRAFT AND AIRCRAFT PARTS EXEMPTION CERTIFICATE

For purposes of the proper administration of and to prevent the evasion of the sales and use 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 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. [21] The aircraft or aircraft parts exemption 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

[18] Sales and Use Tax Regulation 1593, subdivision (c)(1)(G).
[19] Sales and Use Tax Regulation 1620, subdivision (b)(5)(D).
[20] Sales and Use Tax Rule 1620, subdivision (b)(5)(D).
[21] Sales and Use Tax Regulations 1593, subdivision (e).

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.[22]

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.[23] 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.[24]

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.[25] 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:

> (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

[22] See Assessors' Handbook Section 577, *Assessment of General Aircraft*, for a complete discussion of general aircraft assessment.
[23] *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.
[24] *Ice Capades, Inc., supra* at 755; Property Tax Rule 205, subdivision (b).
[25] *Xerox Corp. v. Orange County* (1977) 66 Cal.App.3d 746.

> typically incurred in bringing the property to a finished state, including labor and materials, freight or shipping cost, installation costs, sales or use taxes….

Air taxis which are operated in scheduled air taxi operations are subject to property taxation as certificated aircraft. Nonscheduled air taxis, however, are treated as general aircraft for property taxation purposes. Revenue and Taxation Code section 1154 provides in part:

> …(c) All other air taxis shall be assessed in the county where the aircraft is habitually situated in the same manner and at the same ratio as other personal property in the county subject to general property taxation. Such aircraft shall be taxed at the same rate and in the same manner as all other property on the unsecured roll.

Thus, a county assessor should include sales or use tax in the property tax valuation of general aircraft that are used as nonscheduled (or on-demand) air taxis. Aircraft used by common carriers and the federal government are exceptions to the general rule of the inclusion of sales tax in the property tax valuation.

For sales or use tax to be excluded from the property tax valuation of general aircraft that are used as a common carrier, the following information must be provided to the county assessor for each lien date for which exclusion of sales or use tax as an element of property tax valuation is sought:

1. A Board approved *Aircraft or Aircraft Parts Exemption Certificate* for principal use as a common carrier.[26]

2. Documented evidence that the aircraft is being operated as a common carrier on the lien date.

3. Documented evidence that the aircraft was used exclusively as a common carrier during the calendar year prior to the lien date. If the aircraft is put to private use or rented to a private party during the calendar year, it would not qualify for the exemption as a common carrier.

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

[26] Sales and Use Tax Regulation 1593(e), *Aircraft and Aircraft Parts Exemption Certificate.*

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.[27]

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 the lien date used it in 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….[28]
>
> (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 make 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:

1. The aircraft is taken out of scheduled service and grounded in the county prior to the lien date.[29]
2. The aircraft is not flown during the representative period.[30]
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.[31]

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

As a general rule, aircraft subject to property taxation would include freight charges and sales or use tax as components of value.[32] 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.[33] The exceptions to the general rule are common carrier aircraft and federal government aircraft.

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[27] See Assessors' Handbook Section 570, *Assessment of Commercial Aircraft*, for a complete discussion of commercial aircraft assessment.
[28] For valuation purposes, scheduled air taxi service is treated the same as certificated aircraft.
[29] Revenue and Taxation Code section 1150.
[30] Revenue and Taxation Code section 1153.
[31] 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.
[32] *Xerox Corp. v. Orange County* (1977) 66 Cal.App.3d 746.
[33] Property Tax Rule 10.

EXHIBIT 1

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

_____

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 from gross receipts for purposes of this presumption.

Identification Numbers of Aircraft Purchased under this Certificate:

_____

_____

_____

Date Certificate Given:_____

Purchaser_____
(Company Name)

Address_____

Signature_____
(Signature of Authorized Person)

Title_____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any)_____