STATE BOARD OF EQUALIZATION

January 12, 1955

D--- A--- C---, Inc.
XXXX --- --- Boulevard
--- ---, California -- -X-XXXX

Attention: Mr. P--- S. F---
Treasurer's Staff Assistant

[Now: SY – XX-XXXXXX]

Gentlemen:

The undersigned has reviewed your letter of October 4, 1954, and the supplemental information submitted therewith, and discussed the contents thereof with Mr. Harry L. Say, Sales Tax Administrator.

We are of the opinion that the use made of the plane H-XXXXX went beyond a reasonable interpretation of "demonstration or display" as used in Sections 6094 and 6244 of the Sales and Use Tax Law. It appears from your letter that on certain flights personnel were aboard for a purpose other than demonstration or display of the plane. For example, on page 6, it is stated that certain employees were on board on flight 188 from Oakland to Wright Field "whose purpose in being aboard was to assist in the negotiation for potential air cargo contracts with the military at Wright Field and Washington". We note from the flight log that the object of this flight was designated as "XC". We do not know the meaning of this designation. Other flights were designated as "Test", "Spec." or "Special", "Photo", Demonstra." Or Demonstration", "Test Ferry" or "Ferry".

We, of course, do not know the technical meaning of those terms, but would assume that those terms other than "Test" or "Demonstration" would mean some other or additional purpose. You will note that Sections 6094 and 6244 do not permit of <u>any</u> use other than retention, demonstration or display if tax is not to apply to the cost of the property or its component materials.

The auditor states that the plane was used for the following purposes, clearly other than or in addition to demonstration or display:

> "Transported D--- executives, other people on one-way trips, such people not potential purchasers.

> "Plane used extensively for engineering tests. Results of these tests influenced design and production of later models; i.e., tests of a new brake. Plane was flown repeatedly to determine adequacy of a proposed new brake. This brake was included in future specifications after successful tests.
>
> "C.A.A. certification accomplishes a purpose which benefits future production. C.A.A. requirements are such that taxpayer could be asked to fly each plane for 500 hours to prove the airworthiness of the design and specifications. However, by using this plane and flying a great number of hours, C.A.A. waived requirements on other planes, and certified all future DC-6's without requiring certification flights."

If any of this information is in error, we shall, of course, be glad to be so informed.

Accordingly, we are not in a position to recommend that the material costs of the plane in question be deleted from the measure of the tax. We are returning herewith Exhibit C as requested by you.

Page 6, item 7, Sales to Q--- E--- A---, $17,621.55, was to be held in abeyance pending the issuance of an Opinion of the Attorney General requested on sales to Q--- by various vendors. This Opinion, 53/210, was issued November 22, 1954, holding the tax to be applicable. A copy is enclosed.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:tj

cc: --- --- – Tax Administrator