

## **715.0000 AIRCRAFT COMMON CARRIERS AND WATERBORNE VESSELS— Regulation 1805**

(Note: References to waterborne vessels relate to a partial tax exemption in effect prior to January 1, 1984, and between March 1, 1984 and January 1, 1988.)

### **(a) MATTERS COMMON TO BOTH CATEGORIES**

#### **(1) GENERAL**

[715.0010](#) **Air Cargo Containers.** Air cargo containers are transported to shippers who fill them. Then the filled containers are transported over the highway to the air carrier's docks. When shipping space is available, the filled containers are loaded on the aircraft and carried to the destination. Cargo in incoming containers is delivered in the containers and over the roads and highway to the consignor of the goods. Under these circumstances the cargo containers are not used by the aircraft operator exclusively in the operation of aircraft as common carriers of persons or property for hire or compensation. Therefore, the exemption provided by Regulation 1805 does not apply with respect to such cargo containers. 1/27/83.

[715.0040](#) **Exclusive Use—General.** The requirement that the property shall be used “exclusively” in common carrier operations will be considered satisfied if the property is so used for at least six months after use commences. 2/17/59; 10/25/89.

[715.0080](#) **Leases.** The exemption of common carriers does not apply to sales made to a firm owning and leasing aircraft to carriers. 10/4/56.

[715.0120](#) **Leases.** The exemption requirements are not met if the exempt property is leased to someone by the purchasing carrier. It is immaterial that the property may be used by the lessee in operations which fall within the scope of Regulation 1805. The exemption controlling factor is that the carrier did not use the property in its own operations as such and thus, did not meet the requirements of the regulation. 2/28/67; 10/25/89.

[715.0180](#) **Supplemental Air Carrier.** An airline which has been issued a supplemental air carrier certificate by the Civil Aeronautics Board and is authorized to make charter flights in the United States and Pacific area, qualifies as a public utility and common carrier under Regulation 1805. 6/30/65. (Am. 2002–2).

#### **(2) “DIRECT” USE OF PROPERTY**

[715.0200](#) **Alcoholic Beverages.** The sale of alcoholic beverages to airlines or other carriers is not exempt from state-administered local sales or use taxes. Such property is not regarded as being “directly used in the transportation of persons,” or as “supplies and equipment used or consumed directly in the carriage of persons or property.” 5/4/65.

[715.0220](#) **Books and Playing Cards.** Booklets and playing cards placed on aircraft for the convenience of passengers are not “supplies and equipment used or consumed directly in the carriage of persons,” and are not “directly used in the transportation of persons or property.”

Only items used in the operational sense, as distinguished from items used for the enjoyment of passengers, are “directly used” within the meaning of the regulation. 4/18/67.

[715.0230](#) **“Directly Used”—Explained.** The rationale of Annotations 715.0200, 715.0220, and 715.0340 is that those items reasonably necessary for the physical operation of the aircraft (i.e., fuel, repair parts, etc.) and those items reasonably necessary for the sustenance of passengers in flight can be considered as “directly used.” Included in this latter category are food service and similar commissary supplies; however, alcoholic beverages, tobacco products, playing cards, and books are excluded. Also excluded are glasses, stirrers, napkins, etc., used in the service of alcoholic beverages. 6/27/73.

[715.0260](#) **Forms—Office Machines.** Freight billing forms are “office or shop equipment or supplies,” which under Regulation 1805 do not qualify for the common carrier local tax exemptions. 1/14/66; 10/25/89.

[715.0270](#) **Fuel Sold to Airlines.** Sales of jet fuel used by airlines for pilot training or for testing engines is not exempt from local tax. 7/27/72.

[715.0275](#) **Internal Bookkeeping Machines.** The airline’s internal bookkeeping machine and communications device used to determine availability of passenger or cargo space on particular future flights is not a device directly used in the transportation of persons and property as are the ticketing machines, credit card stampers and baggage scales. 1/21/74.

[715.0310](#) **Pillows and Pillowcases.** Pillows and pillowcases used aboard aircraft are not regarded as directly and exclusively used in the use of aircraft as common carriers. The local sales tax and district sales tax apply to the sale or use of pillows and pillowcases by aircraft common carriers. 9/16/83.

[715.0360](#) **Uniforms.** Uniforms for use by company personnel are not within the exemption from local sales and use taxes applicable to certain property used by common carriers and waterborne vessels. We do not believe that uniforms for personnel meet the requirement of (d) of Regulation 1805. 4/4/67.

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[715.0460](#) **Certificate.** In order to be considered a common carrier, the carrier must offer to the public to carry persons, property or messages. If a carrier is considered a common carrier under the rules and regulations of the Interstate Commerce Commission, it will be considered a common carrier. It is not necessary to have a California Public Utilities Commission certificate in order to be considered a common carrier. 12/28/64.

[715.0465](#) **Certificates of Public Convenience and Necessity.** Since 1978, the federal requirement that air carriers possess certificates of public convenience and necessity no longer applies. At about the same time, the California Public Utility Commission also eliminated such requirement. The requirement for air carriers to operate “under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States,” as set

forth under Regulations 1805(b)(2) and 1825(b)(2) is no longer applicable. Accordingly, sales to aircraft common carriers qualify for the exemption under the above regulations if the remaining conditions of the exemption are met. 3/10/86.

**715.0490 Fuel Used in County of Purchase.** A common carrier airline purchases jet fuel in California. If enough fuel is on board prior to California fueling to reach the first out-of-state landing point, all of the fuel purchased in California is exempt from state tax if the requirements of Regulation 1621 are met. If no state tax applies, then no local or district tax can apply.

If, however, only a portion of the sale of fuel was exempt from state tax (i.e., if there was not enough fuel on board prior to California fueling to reach the first out-of-state landing point), the amount of fuel subject to state sales tax will be the total amount of fuel consumed in reaching the first out-of-state landing point less the amount of fuel that was on hand when the aircraft landed in California. The amount subject to local and district sales tax is the amount of fuel sold and consumed in the county of sale (but this shall not exceed the amount subject to state tax). 3/26/79.

**715.0515 Local Tax Exemptions.** Information was requested regarding the application of the local tax exemptions to the following items purchased by airlines for use in their business and also any guidelines to determine which items qualify for the exemption.

(1) Sodas and Ice. The airline is considered the consumer when these items are served as part of meals and they qualify for the exemption. When these items are sold or furnished as a component part of alcoholic beverages, they are not eligible for the exemption.

(2) Alcoholic Beverages. Even when served as part of a meal, they are not directly used in carriage service. No exemption is available.

(3) Electronic Flight Information Display System. These monitors are used as part of the airline's business activity, but are for the benefit of the general public, including ticketed passengers. No exemption applies.

(4) Computer Equipment Used for Reservations and Ticketing. Assuming that the equipment is used solely for reservations and ticketing, it qualifies for the exemption.

(5) Ticket Counters, Sky Cap Stations, Gate Check In Counters. Assuming these items are used as part of the airline's business activity, they qualify for the exemption.

(6) Signboards. They fill much the same role as printed schedules. While useful to the business, they are not essential and do not qualify for the exemption.

(7) Menu Used for Meal Selection. While a convenience, they are not reasonably necessary for passenger maintenance; no exemption applies.

(8) Pillows. See response to Item 7.

(9) Ticket Envelope. Holds the ticket and also advises the passenger of the flight number and seat assignment. The exemption applies.

(10) Polyliner Bags. Used to collect passenger discards and trash from the restrooms. Assuming this item was purchased from sellers outside “airport counties”, if used at the airport, the use tax exemption would apply.

(11) Markers. Used for mailing tickets and also general administrative functions. The exemption does not apply.

(12) Ground Power Units and Air Start Carts. The use tax exemption does not apply to shop equipment nor to aircraft engine and systems test equipment.

(13) Ground Handling Equipment. Tugs used for positioning the aircraft and ground equipment used for transporting the baggage to, and loading it on the aircraft qualify for the exemption.

To qualify for the operation of partial exemption from local use tax, the property must be used directly and exclusively in the use of aircraft for the carriage of persons or property. Sales to airlines of tangible personal property which is generally useful to the business but not directly and exclusively involved in the carriage of persons and property which is part of the carrier’s business activity, are not covered by the exemption. 8/30/91, 12/4/91.

**715.0517 Packing Material Supplied to Customers.** An aircraft common carrier of property furnishes packing material to customers who place the property to be shipped into the packing material furnished. If the packaging is provided to customers in the county in which the sale of the packaging to the common carrier occurred, that sale of the packaging material to the common carrier would not qualify for the exemption from local tax provided by Regulation 1805. The customer’s labeling of the packaging and insertion of the contents is a principal use of the property in the county of purchase. 6/18/91.

**715.0518 Place of Sale for Fuel Sold to Aircraft Common Carrier.** Corporation A, a wholly owned subsidiary of Corporation B, was organized for the purpose of purchasing aircraft fuel from fuel suppliers and reselling the fuel to B. Two questions were asked:

(1) Is the point of sale on a “needs” contract the same for local and state tax purposes, particularly when the seller’s only California location is in a county other than the county in which the fuel is delivered? (“Needs” or “requirements” contracts call for the furnishing of fuel to the airline at a stipulated price. The contract may provide for minimum and maximum amounts of fuel and all other details except amount of fuel to be placed in a particular aircraft and the particular time of delivery.)

It makes no difference whether or not the fuel contracts are requirements contracts. The sale for sales and use tax purposes occurs when B, not A, takes possession of the fuel. Whether there is a requirements contract or not, this occurs when the suppliers who sold the fuel to A for resale to B, actually deliver the fuel to the aircraft.

(2) If the point of sale for local tax purposes is different than for state tax, what minimum requirements must the seller meet to establish a presence in a specific county other than the county of delivery?

If there are facts which indicate that B's employees, acting as agents on behalf of A, in B's California office, take any part in negotiations for the sale of fuel by A to B (including, for example, taking orders for the quantities of fuel to be delivered at the airport), then those facts could be sufficient to establish that A has a place of business in California for Bradley-Burns and district tax purposes. It would not matter whether the principal negotiations for the sales occurred out of state, as long as some activity related to sales is attributed to the California office. Since that California office would be its sole place of business in California, all sales for Bradley-Burns and district tax purposes would be considered to have occurred in that county and not in the county of delivery.

Thus A's sales of fuel to B would qualify for the 80% exemption from Bradley-Burns taxes and the full exemption from district taxes, because the fuel sold would be entirely consumed outside of the county of the place of sale. 4/14/89. (Am. 2002-2).

(Note: Subsequent statutory change July 29, 1991, regarding "exemption for fuel".)

(Note: Statutory change operative January 1, 1999, regarding "place of sale of jet fuel", and see Regulation 1805. Also note statutory changes in Revenue and Taxation Code sections 7204.03 and 7205 regarding "place of sale of jet fuel" and see Regulation 1802(b)(7).)

[715.0520](#) **Private Carriers.** The exemption of sales to common carriers does not apply to sales to private or contract carriers. 10/18/56.

[715.0580](#) **Wholly Interstate Carrier—Constitutionality.** The conclusion that the imposition of local use tax on the use of property by a wholly interstate carrier would be unconstitutional is effective from the date of the local ordinance imposing the tax. Refund claims may be filed within three years from the last day of the month following the close of the quarterly period for which the tax was paid. 11/16/64.