



STATE BOARD OF EQUALIZATION

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February 8, 2002

To COUNTY ASSESSOR,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

No. 2002/008

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

ADOPTION OF PROPERTY TAX RULE 138-EXEMPTION FOR AIRCRAFT
BEING REPAIRED, OVERHAULED, MODIFIED OR SERVICED.

PUBLIC HEARING: WEDNESDAY, MARCH 27, 2002 AT 1:30 P.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606, subdivision (c) of the Government Code, proposes to adopt Rule 138, Exemption for Aircraft Being Repaired, Overhauled, Modified or Serviced, in Title 18, Division 1, of the California Code of Regulations. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on March 27, 2002. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by March 27, 2002.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under existing law, all property is taxable unless there is a specific constitutional or statutory exemption for the property. The determination of taxability is generally made as of the lien date, January 1 of each year. Certificated aircraft used by air carriers is subject to taxation when in revenue service in California. However, section 220 of the Revenue and Taxation Code provides an exemption for aircraft in California on the lien date solely for the purpose of being repaired, overhauled, modified, or serviced. The legislative purpose for the exemption was to promote the aircraft service and repair industry in California, which industry is in competition with similar industries in other states that do not have a comparable tax on aircraft.

Rule 138 will make it clear that the exemption provided by section 220 applies to aircraft which are located in California while out of revenue service due to the downturn in air carrier business in the aftermath of the terrorists attacks of September 11, 2001, where such aircraft are serviced in accordance with FAA requirements. The broad objective of the rule is to encourage air carriers to service their aircraft in California while the aircraft is out of revenue service. The benefit to California is the aircraft maintenance and repair work that will accrue to California businesses. The proposed rule is intended to make it clear that the terms "aircraft . . . in California . . . solely for the purpose of being repaired, overhauled, modified, or serviced" includes necessary and attendant storage and that exempt aircraft are not valued under Rule 202.

Air carrier management have been uncertain as to whether the exemption provided by section 220 would apply to aircraft located and maintained in California under the circumstances described above. Proposed Rule 138 addresses that uncertainty, interpreting and making specific the provisions of section 220, providing that the exemption will apply to the aircraft in question and that the aircraft in question will not be included in the allocation calculations of Rule 202. Subsection (a) of the rule states the general exemption, restating the provisions of section 220. Subsection (b) of the rule addresses how certificated aircraft can qualify for the exemption and that incidental and attendant storage is not disqualifying. Subsection (c) of the rule states that certificated aircraft that meet the requirements of subsection (b) also meet the "operated interstate in California" requirement for exemption. Subsection (d) of the rule provides that certificated aircraft that qualify for exemption are not included in the allocation formula of Revenue and Taxation Code section 1152 and Rule 202. Subsection (e) of the rule provides reporting requirements upon air carriers seeking to qualify for the exemption.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that proposed Rule 138 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule will not result in direct or indirect cost or savings to any State agency, any cost to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with § 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5, subdivision (a)(8), the Board of Equalization makes an initial determination that proposed Rule 138 will not have a significant statewide adverse economic impact directly affecting business.

The proposed rule will neither eliminate jobs in the State of California nor result in the elimination of existing businesses. The proposed rule may result, however, in the creation of jobs in the State of California and create and expand business in the State of California. The proposed rule will not be detrimental to California businesses in competing with businesses in other states.

The proposed rule will not affect small business because the new rule only clarifies existing interpretations of statute.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Rule 138 has no comparable Federal regulation.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Revenue and Taxation Code sections 220, 1150, 1151, 1152 and 1154.

CONTACT

Questions regarding the substance of the proposed rule should be directed to Mr. Anthony Epolite, Tax Counsel, Property Tax Section, telephone (916) 324-2642, fax (916) 323-3387, email anthony.epolite@boe.ca.gov or by mail to the State Board of Equalization, Attn: Anthony Epolite, MIC:82, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

The Board will consider comments on the rule if received by March 27, 2002. Written comments for the Board's consideration, notice of intent to present testimony or witnesses, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, email Diane.Olson@boe.ca.gov or to Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, email Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC:80, P.O. Box 942879, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed rule. This document and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) are available on the Internet at the Board's website <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's website following its public hearing of the proposed rule. The final statement of reasons is also available for public inspection at the State Board of Equalization, 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed rule if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the rule. The text of the modified rule will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule for fifteen days after the date on which the modified rule is made available to the public.

Dated: February 8, 2002

STATE BOARD OF EQUALIZATION

Deborah Pellegrini, Chief
Board Proceedings Division

DP:dgo
Enclosure

Rule 138. EXEMPTION FOR AIRCRAFT BEING REPAIRED, OVERHAULED, MODIFIED OR SERVICED.

(a) SCOPE OF EXEMPTION. Any aircraft, certificated or noncertificated, which is in California on the lien date solely for the purpose of being repaired, overhauled, modified, or serviced is exempt from personal property taxation. Aircraft operated intrastate in or interstate into California and aircraft normally based in California do not qualify for exemption.

(b) QUALIFYING CERTIFICATED AIRCRAFT. Aircraft that qualify for exemption include certificated aircraft that have been taken out of revenue service by an air carrier:

- (1) for the purpose of being repaired, overhauled, modified, or serviced; and,
- (2) with an executed contract or a specific written plan for the purposes described in subsection (b)(1).

Aircraft in California solely for the purposes described in subsection (b)(1) include any incidental and attendant storage.

(c) INTERSTATE OPERATION. Certificated aircraft that have been taken out of revenue service under the provisions of subsection (b) above as of the lien date are not aircraft operated interstate into California for purposes of this rule.

(d) THE VALUATION OF CERTIFICATED AIRCRAFT. Certificated aircraft, located in or outside of the state, that have been taken out of revenue service under the provisions of subsection (b) above, shall not be valued pursuant to section 401.15 of the Revenue and Taxation Code nor included in the allocation formula of section 1152 of the Revenue and Taxation Code and rule 202, until the lien date next following the date that such aircraft are returned to revenue service.

(e) REPORTING BY AIR CARRIERS. When filing business property statements, air carriers shall indicate on the property statement or an attachment to the property statement those certificated aircraft which qualify for exemption pursuant to this section. Air carriers shall maintain records adequate to verify that these aircraft qualify for exemption.

Note: Authority: Section 15606, Government Code.

Reference: Sections 220, 1150, 1151, 1152 and 1154, Revenue and Taxation Code.