

325.0002.100

(916) 445-5550

December 11, 1991

Re:

Dear

This is in response to your letter dated October 9, 1991 regarding the application of tax to your use of an aircraft in California. You previously requested opinions on this subject in letters dated October 10, 1990 and November 27, 1990 to which I responded in letters dated November 7, 1990 and January 2, 1991, respectively. In my letters, I explain the circumstances under which we would consider the use of an aircraft in California to be nontaxable use in interstate commerce.

Your current letter concerns your intention to purchase an aircraft currently registered to the manufacturer, as an experimental aircraft. Title and registration has always remained in . The aircraft has never been completed but was flown for approximately 200 flight hours in connection with a research, development, and demonstration project. You will purchase the aircraft outside California and will thereafter complete the aircraft by having an interior and certain equipment installed and the aircraft painted (collectively referred to as the "aircraft completion"). If the aircraft completion is done inside California, the contract for that aircraft completion will require the vendor to deliver the completed aircraft to you outside California where you will take title to the aircraft completion. Thereafter, the aircraft will enter California as described in your previous letters.

Discussion

You have asked seven different questions. Some of these are repetitive of the questions we have previously answered. Therefore, rather than answer your questions as set forth, I answer only the relevant portions of those questions as pertains to the differences in analysis between the factual circumstances in this letter (that is, the aircraft completion) and the previous letters.

216

December 11, 1991

There are two basic issues involved in the current factual scenario. One is whether the property sold in conjunction with the aircraft completion is subject to sales or use tax in California. The second is whether the actual aircraft completion and related activities will cause the aircraft itself to be subject to sales or use tax in California when it would not otherwise be taxable.

If the aircraft completion is performed outside California with title to the property also passing to you outside California, California sales tax obviously does not apply. When the property which is part of the aircraft completion first enters California, it would be part of the aircraft. Therefore, the only property with which we would be concerned would be the completed aircraft. (See, e.g., Flying Tiger Line, Inc. v. State Board of Equalization (1958) 157 Cal.App.2d 85.) If your use of that aircraft in California is identical to that use I previously concluded would not be subject to tax in my letters dated November 7, 1990 and January 2, 1991, no tax would apply to the use of the aircraft or the aircraft completion. The remainder of this opinion relates only to circumstances where the aircraft completion is performed in California.

As you note, annotation 570.1220 (11/4/66) states that installation of an aircraft interior into a new aircraft is a step in the manufacturing process. If the aircraft is in California for the sole purpose of having the interior installed and upon completion of the interior the aircraft will be delivered to the purchaser outside California pursuant to the contract of sale of the interior, the period during which the aircraft is in California for installation of the interior will not be considered a use for purposes of application of use tax. We assume that you will not make functional use of the aircraft prior to the aircraft completion. We consider the aircraft about which you inquire to be a new aircraft within the meaning of the annotation because of the circumstances you describe in your letter. Further, we assume that the aircraft did not previously have an interior so that the aircraft completion is the addition of items rather than the replacement. Therefore, as explained in the annotation, we conclude that the aircraft completion is a step in the manufacturing process necessary to put the aircraft in a functional condition.

The aircraft's presence in California which is limited to the purpose of the aircraft completion will not be considered in determining whether the aircraft is purchased for use in California. Test flights of the aircraft by the aircraft completion vendors' employees or agents during the aircraft completion for purposes of that step of the manufacturing process (i.e., aircraft completion) will not be regarded as use for

December 11, 1991

purposes of application of use tax. The property sold to you by the vendors performing the aircraft completion will be regarded as exempt from sales tax as a sale in interstate commerce since your contract with those vendors will require the property to be shipped to you outside California and the property will, in fact, be shipped to you outside California. Whether use tax applies will be determined by whether the aircraft as a whole is regarded as purchased for use in California as discussed in my previous letters (that is, the property related to the aircraft completion is exempt from sales tax and when it reenters California it does so as part of the aircraft).

You also inquire with respect to your employees' conducting visual inspections of the aircraft during the aircraft completion. Visual inspections would not affect our analysis. You also inquire as to participation by your employees in test flights of the aircraft during the aircraft completion. Whether this affects our analysis depends upon whether such participation constitutes delivery to you in California. If so, sales tax would apply to the sale of property to you as part of the aircraft completion. Under the facts you have described, it appears unlikely that we would regard such participation as delivery to you in California. Nevertheless, without reviewing the actual contracts involved together with a complete description of that involvement, we do not have sufficient information to provide you with a more definitive response.

Assuming the property sold pursuant to the aircraft completion is exempt from sales tax as discussed above, the presence of the aircraft in California during the aircraft completion will not affect our previous analysis. Therefore, after you accept delivery of the completed aircraft outside California, whether use tax applies to your use of the aircraft in California is governed by the analysis provided in our previous letters.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:cl

325.0002.100

May 21, 1992

Re:

Dear _____

This is in response to your letter dated February 25, 1992 regarding the application of tax to your acquisition and use of an aircraft. I have written you previous opinions on this subject in letters dated December 11, 1991, January 2, 1991, and November 7, 1990 in response to your letters dated October 9, 1991, November 27, 1990, and October 10, 1990, respectively. In my previous letters, I have explained the circumstances under which we would consider the use of an aircraft in California to be nontaxable use in interstate commerce. Since I believe have thoroughly covered this subject, I will limit the discussion herein to the specific facts that you believe may be different than considered in my previous letters.

The aircraft in question will be completed by _____ primarily in California. As noted in my previous letters, if you take delivery of the aircraft completion from _____ in California, then the sale of items provided by _____ would be subject to sales tax. Your questions relate to whether we will regard you as having taken delivery of the aircraft in California under the facts you present.

The practice of _____ to conduct three test flights during the completion process. With respect to the first test flight, only _____ employees or its agents are on the aircraft. With respect to the other two test flights, the owner of the aircraft is invited to be present to observe and advise the _____ employees of any problems during the test flights. You state that none of your employees or agents will be authorized to

take possession or control of the aircraft on your behalf in connection with any test flights, and those persons would be present solely to inform employees of any problems that are observed. You ask for confirmation that presence of your employees or agents for observation during test flights will not constitute delivery to you in California.

The time of delivery is a mixed question of contract interpretation and the actual facts involved in the transactions. You state that no employee or agent of yours will be "authorized" to take possession or control of the aircraft during the test flights. It is unclear which party is withholding "authorization" from your employees or agents. If your employees or agents do, in fact, take possession or control of the aircraft, sales tax will apply to the sale of the aircraft completion. Furthermore, section 2.2 of the contract states: "BUYER shall have the opportunity to inspect and/or flight test the aircraft at both _____ and _____." Two conditions must be satisfied to qualify for the exemption from sales tax for sales in interstate commerce: the contract must require the purchased property to be shipped outside California prior to delivery to the purchaser in California, and the property must, in fact, be shipped outside California prior to delivery to the purchaser in California. (Reg. 1620(2)(3).) Section 2.2 of the contract appears to authorize delivery of the aircraft completion to you in California, meaning that the sale is not exempt from sales tax.

You state that your previous request for opinion mistakenly indicated that the exterior of the aircraft would be painted in _____ However, you now state that this portion of the aircraft completion will instead be performed in _____

You state that the aircraft will be flown by employees or agents of _____ to _____ and that you would like to have one or more of your employees or agents on board for the flight to _____ in order to observe how the interior of the aircraft reacts to condensation, or otherwise at high altitudes during an extended period of time. You further state that no employee or agent of yours will be authorized to take possession or control of the aircraft on your behalf during that flight. You ask that we confirm that the presence of your employees or agents on the flight to _____ will not constitute delivery of the aircraft completion to you in California.

You state that none of your employees or agents will be "authorized to take possession or control of the aircraft" on your behalf. If none of your employees or agents in fact take possession or control of the aircraft while it is in California territorial limits, their presence on the aircraft during the test flight solely for the purpose of observation and advice would not

May 21, 1992

lead us to conclude that you took delivery of the aircraft completion in California. I note, however, that section 2.4 of the contract states "there will be no other persons [other than two pilots] on the aircraft when SELLER flies it to [redacted] for painting" This is contrary to your stated intent since it appears to prohibit the presence of your employees or agents on the flight to [redacted]. Nevertheless, since the provision does not permit you to take delivery of the aircraft completion in California, the conflict between your stated intent and the contract does not affect our conclusion.

I note that in all four request for opinion on this topic, there has been included a line for us to execute to acknowledge that no tax applies to the transactions for the reasons stated in your letter, for purposes of coming within the provisions of Revenue and Taxation Code section 6596. For your future reference, I note that we do not respond to requests for opinion in that fashion. Our responses contain our own full analysis of the questions presented.

Sincerely,

David H. Levine
Senior Tax Counsel

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bc: District Administrator