

M e m o r a n d u m**185.0100**

To: Fresno – District Administrator

March 29, 1965

From: Tax Counsel (JHK) - Headquarters

Subject: Interstate Sales of Aircraft

Mr. E. H. Stetson referred your letter of March 10, 1965, to me since I have had some background on the problems involved. He is in agreement with the content and recommendations of this letter.

Your letter described four situations concerning an out-of-state airplane dealer who makes sales in California. In the first situation the California buyer makes arrangements for the dealer to bring the airplane to California, and if the airplane is as represented, he agrees to purchase it. The dealer brings the aircraft to California, and after inspection, sells it to the California buyer, executing a bill of sale.

In this situation there is no enforceable contract prior to bringing the airplane into California. The bill of sale is executed here; the buyer and seller are both present in the state. There can be no doubt that the sales tax applies to the retailer and the purchaser is exempted from use tax under §6401. The dealer is engaged in the business of selling airplanes; therefore, the first sale of an airplane in California is subject to sales tax, because he is a retailer under § 6015(a). The sale did not occur in interstate commerce and the seller was physically present in the state, satisfying the due process clause, so no constitutional limitation is involved.

In the second situation a local aircraft dealer aids the local buyer in finding an airplane for sale from an out-of-state dealer. However, the out-of-state dealer again flies the airplane to California and sells the airplane to the buyer in California. Again, the out-of-state dealer is subject to sales tax. The local dealer has not made the sale or executed a power of sale given to him by the owner of the airplane.

In the third situation the local dealer is more involved with the sale in that he aids the parties to obtain financing by executing a conditional sales contract for the buyer, discounting

the contract to the local bank with recourse, and pays the dealer for the airplane, keeping the excess for his commission. At times the local dealer retains the buyer's trade-in. We believe in this case the local dealer is subject to sales tax. While he may have only aided the parties in obtaining financing, he has done it in a manner that is subject to sales tax. In order to sell goods under a conditional sales contract, the local dealer must have obtained title to the airplane. The fact the local bank has recourse against him and that he has taken a trade-in also tend to establish that he has taken title to the airplane and sold it to the local buyer.

In the fourth situation the airplane is left with the local dealer to sell. However the dealer does not have title or power to transfer title to the airplane. Rather, a local bank is given this power. At times the customer pays in cash, and at times he enters a conditional sales contract with the local dealer. Here, several results are possible. If the out-of-state dealer is not engaged in business in California, then the provisions of § 6007, paragraph 2, are met, and delivery by the local dealer on behalf of the out-of-state dealer makes the local dealer subject to sales tax. If the out-of-state dealer is engaged in business, we believe he is subject to tax as the seller even though the bank passes title to the airplane. Banks are exempt from sales tax under § 6352 because federal law forbids it. Otherwise, it, too, would be liable. If the local dealer only shows the airplane and does not enter into a conditional sales contract with the buyer, he cannot be considered as selling the airplane. If he does enter a contract, he should be considered the seller along with the out-of-state dealer.

Banks now subject to sales tax; see Reg. 1567. DJH

As we indicated above, an out-of-state dealer is in the business of selling airplanes and is subject to sales tax upon the first California sale. The number of times he does it within a twelve-month period is not important. The local customer, of course, cannot be held for sales or use tax in this situation. We can see there are difficult audit problems in this area. Our position respecting the execution of a conditional sales contract has not been consistent in the past. The position of this letter is an attempt to alleviate the audit problem and to reduce the avoidance of sales tax.

The board is presently considering the analogous problem of yacht brokers who enter conditional sales contracts and they will probably take the position that this is sufficient to make them liable for the tax. When the preliminary hearing on the taxpayer involved is held, it may be possible to establish further ground rules. We are uncertain at present of the information contained on the FAA bill of sale. It may be this will establish whether the out-of-state dealer or the local dealer should be held accountable for sales tax in any particular situation.

JHK:ls

cc: Mr. E. H. Stetson
Mr. Robert H. Anderson