



STATE BOARD OF EQUALIZATION

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June 23, 1989

Mr. P--- . A---
A--- & A---
Lawyers
XXXX --- Boulevard, Suite XXX
--- ---, CA XXXXX

Transfer of ownership of airplane – assumption of
loan obligation

Dear Mr. A---:

In your May 2, 1989 letter to Mr. E. L. Sorensen, Senior Tax Counsel, you write:

“I have two individual clients who, through their ownership interest in a partnership, owned the (beneficial) interest in an airplane from 1981 until it was sold in 1987.

“The partnership was in the business of leasing various items of business property, such as computers. The airplane was leased by the partnership almost the entire time, from 1981 to 1987, to a third party.

“The two individual clients, after the partnership airplane was sold in 1987, purchased another airplane in 1987, which they owned in their individual capacities, equally. They paid part cash and the balance of the purchase price was by a loan obtained by my clients in their individual capacities.

“They immediately chartered the airplane on an as-use basis to other third parties from the time of purchase in 1987 to early 1988.

“In early 1988, my clients transferred the ownership of the airplane to a new corporation they formed in early 1988 for the sole purpose of continuing the airplane leasing business. The loan on the airplane was not transferred to the corporation (it remained in

the name of the individuals), but the payments were made on the loan by the corporation.

“The corporation assumed the loan obligation of the individuals without contacting the lender except by the monthly payments, indicating that the corporation was paying the loan.

“After the airplane was transferred to the corporation, it continued to be leased extensively.

“In September, 1988, the corporation sold the airplane (obviously a sales tax was then due).

“Is there any sales tax due on the transfer of the airplane to the corporation and the corporation’s assumption of the loan? We believe there was either no sale or Rev. & Tax. Code Section 6281 applies, either of which results in no sales tax.”

Opinion

Under the Sales and Use Tax Law, all sales of aircraft are subject to either the sales tax or the use tax, unless the sale is specifically exempted by statute. If the seller is not required to hold a seller’s permit issued by the Board, the applicable tax is the use tax, not the sales tax. The purchaser, not the seller, is liable for the use tax and must pay the tax to the Board, not the seller. (Revenue and Taxation Code Sections 6283, 6291, 6401).

For sales and use tax purposes, both a “sale” under Revenue and Taxation Code Section 6006(a) and a “purchase” under Revenue and Taxation Code Section 6010(a) are defined to mean, among other things:

“(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration....”

If there is a taxable sale or purchase, the measure of the tax is the entire consideration received by the seller. The sales price subject to use tax is defined by Revenue and Taxation Code Section 6011(a) as “the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise....” The California courts have held that the consideration paid for the transfer of title to tangible personal property includes an assumption of the liability for the unpaid purchase price of the property. Newco Leasing, Inc. v State Board of Equalization (1983) 143 Cal. App. 3d 120; Cal-Metal Corp. v. State Board of Equalization (1984) 161 Cal. App. 3d 759. One limited exception has been recognized by the court in Macrodyne Industries v. State Board of Equalization (1987) 192 Cal. App. 3d 579, in which the court held that an assumption of liability by already existing wholly-owned corporate subsidiaries of the transferor did not constitute consideration for sales and use tax purposes.

Based on the facts you relate, it is our opinion that the use tax applies to the 1988 transfer of title to the airplane from your clients to the new corporation which your clients formed to continue the airplane leasing business. Even though the loan obligation on the airplane was not formally transferred to the corporation, the corporation nevertheless assumed the loan obligation of your clients by making the monthly payments on the loan. This constitutes consideration for the transfer of the title to the airplane, and is the measure of the tax due. We cannot agree with your contention that there was no sale of the aircraft.

We also cannot agree with your contention that Section 6281 applies. In summary, that section provides an exemption from sales or use tax on the sale of a vehicle, vessel, or aircraft "when such property is included in any transfer of all or substantially all the property held or used in the course of business activities of the person selling the property...." In this case, your clients did not transfer all or substantially all of the property held or used in the course of their business activities, such as leasing computers, and, therefore, this exemption does not apply to their transfer of the airplane to the new corporation. (See Sales and Use Tax Regulation 1595(b)(2) and (c)). In addition, the provisions of Regulation 1595(b)(4) do not apply in this case. That subdivision provides that tax does not apply to a transfer of property to a commencing corporation or commencing partnership in exchange solely for first-issue stock of the commencing corporation or an interest in the commencing partnership. That subdivision provides that "tax does apply, however, if the transferor receives consideration such as cash, notes, or an assumption of indebtedness, and the transfer does not otherwise qualify for exemption."

I enclose a copy of Regulation 1595 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Senior Tax Counsel

JA:jb
Enclosure