STATE BOARD OF EQUALIZATION

November 4, 1966

The G--- Corporation
XXXX --- --- ---
--- ---, CA XXXXX

Attention: Mr. R--- F---
Assistant Corporation Counsel SR -- XX XXXXXX

Gentlemen:

This is in reply to your telegrams of October 26 and 27, 1966, requesting our opinion as to the application of California use tax to a certain aircraft which may be brought into this state for occasional visits. Our conclusion is that the aircraft will not be subject to California use tax if it is not principally used in this state during the six-month period following the date of its first entry into California after its manufacture was completed.

This opinion is based upon the following facts as supplied in your telegrams:

> A midwestern based company qualified to do business in the State of California purchased a new executive aircraft outside of the State of California in an incomplete condition and brought it to Los Angeles to A--- A--- S--- Company for completion. When the aircraft was completed it was delivered to the midwestern firm outside the State of California pursuant to the terms of the completion contract and at that time midwestern firm did not intend to use the aircraft in the State of California. More than 90 day[s] have elapsed from the time the midwestern firm acquired the aircraft but less than ninety days have elapsed since the completed aircraft was delivered outside the State of California[.] Substantial use has been made of the aircraft solely outside California since its completion and delivery outside of the State of California.
>
> The aircraft has not been returned to Calif[ornia]. The midwestern firm now wishes to use the aircraft for occasional visits to Calif[ornia].
>
> This position represents a new intent on the part of the company which intend did not exist at the time of the purchase of the aircraft or at the time of the completion of the delivery and its delivery outside of the State of California.

You ask:

> Assuming that the aircraft is returned to California within ninety days from the time that it was completed and delivered outside of the State of California but more than ninety days from the date that the aircraft was acquired outside of California in an incomplete condition and assuming that more than half of the functional use of the aircraft will be made outside of the State of Calif[ornia] during the first six months after acquisition and during the first six months after its completion and delivery outside of the State of California – will California use tax be applicable … [?]

You have also asked for clarification of the use tax rules applicable to the above situation with particular reference to the ninety-day rule. Your questions have occasioned a thorough examination of the problem by members of our staff. As a result, some of the conclusions stated below may vary from the statements made to you in our telephone conversation of October 31. These variances will not, however, materially affect the application of tax in the case presented here.

Section 6201 of the California Sales and Use Tax Law levies the use tax "on the storage, use, or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 1935, for storage, use, or other consumption in this State… ." This language has been interpreted to mean that three basic requirements must be satisfied before the use tax may be imposed. (1) The property in question must have been purchased from a retailer (not in question here), (2) the property must have been purchased with the intent of bringing it into California and using it here (the ninety-day test), and (3) the property must actually have been used here (the principal use test). If one of these three elements is missing, the use tax is not applicable.

In determining the question of the purchaser's intent, we have long followed the rule that when property is brought into the state within ninety days of its purchase and delivery, a rebuttable presumption arises that the property was acquired with the intent of bringing it here. Conversely, we will not consider property to have been purchased for use here if it was not brought here within the ninety days and it was put to a functional use outside the state prior to bringing it here.

In determining whether property is actually used here, we follow the rule that the property must have been principally used here or spent more than half of the time here, during the six months following entry into the state. (This rule assumes that the property was functionally used outside the state prior to its entry. Unless otherwise exempted, tax will apply regardless of the quantum of use if the property is put to its first functional use in this state. (See American Airlines v. State Board of Equalization, 216 Cal. App. 2d 180.) The time used in completing the manufacture of an aircraft has not been considered in applying this rule, however, under facts similar to those outlined above. The reason being that the aircraft is present here for the sole purpose of having its manufacture completed.

We are of the opinion that when an aircraft is temporarily in this state solely for the purpose of completing its manufacture and putting it into condition to perform its functional and intended use, such contacts with the state should not be considered for use tax purposes, provided that no other use or storage is made of the aircraft during its stay here. Accordingly, the ninety-day-rule period will not begin to run until the completed aircraft is delivered out of state to the purchaser.

This means that since the aircraft you have described will be returned within 90 days of the time it was completed and delivered out of state, it will be presumed to have been purchased with the intent of bringing it here for use.

Taxability will depend, however, upon the quantum of use inside of California during the six-month period following its first entry here after its manufacture was completed. As long as its visits are only occasional and the aircraft does not spend more than half the time here, the aircraft will not be subject to California use tax.

If you have any comments or questions on the foregoing, we will be pleased to hear from you.

Very truly yours,

Richard H. Ochsner
Associate Tax Counsel

RHO:md

cc: --- --- – District Administrator
--- – Subdistrict Administrator