

**STATE BOARD OF EQUALIZATION**

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August 30, 2001

JAMES E. SPEED
Executive Director

Mr. D--- de F---
XXX --- Place
P.O. Box XXXX
--- ---, Idaho XXXXX

**Re: D--- (D---) de F---
SP UT XX-XXXXXX**

Dear Mr. de F---:

This is in response to your letter dated February 21, 2001 addressed to Ms. Mia Brown in the California State Board of Equalization's Centralized Collection Section. Ms. Brown forwarded your letter to the Board's Legal Division, and asked that we respond. In her cover memorandum that accompanied your letter, Ms. Brown indicates that you are requesting clarification of Sales and Use Tax Regulation 1593 (copy enclosed). Specifically, she states that you are "questioning whether an aircraft brought into California, solely for repair, within the first twelve months after purchase, be considered exempt travel, or would those trips be considered as operational use?"

Your letter states the following:

"RECITALS:

"In February 1992 the aircraft was purchased from an aircraft dealer in California by me as a non-resident person living and working in Idaho. Based on the fact that the aircraft was to be promptly removed from California by a no[n]-resident the dealer regarded the sale as exempt from California sales tax – 1593(b)(1)(C). The aircraft continued its status as a non-resident and operated exclusively outside of California.

"I understood that repairs and modifications to the aircraft's component parts 1593(a)(3), 1593(b)(2) could be made in California so long as the aircraft was not used within the state. Therefore, the aircraft was flown into and out of California only for these required component repairs and modifications. These flights into California were for the sole purpose of positioning the aircraft at the repair or

modification facility and were intended to be 'ferry flights' and not a use of the aircraft. 1593(c)(1)(A) & 1593(d)(3).

“SUMMARY:

“I’m asking the Board of Equalization to continue to allow the sales tax exemption for the 1992 purchase 1593(b)(1)(C). My understanding that these ‘ferry flights’ into California for the sole purpose of positioning the aircraft at the repair or modification facility would be allowed as they didn’t represent an operational use in California. Specifically, 1593(d)(1) allows for these ‘repairs’ to the aircraft’s components. I believe that California’s service industry should not be prevented from serving non-resident owned and operated aircraft so long as these aircraft are not ‘used’ in California.

“The attached case [Sales and Use Tax Annotation 105.0088 (3/17/92)] explains my point. The ‘ferry’ trips to a California repair facility didn’t effect the intended use of the aircraft. Thank you.”

Discussion

For purposes of this opinion letter, I assume that you purchased the aircraft for your own use, and that you are not a common carrier, nor do you lease the aircraft to a common carrier. I also assume that the aircraft has not been used continuously and exclusively in interstate commerce since its purchase. If these assumptions are incorrect, the legal opinion provided by this letter may be incorrect, and you should write to us again providing more detailed information so that we may respond accurately.

The retail sale of tangible personal property in California is subject to sales tax, measured by the gross receipts from the sale, unless the sale is specifically excluded or exempted from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax applies to a purchaser's use of property purchased from a retailer for use in California, unless specifically excluded or exempted from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Revenue and Taxation Code section 6366 provides an exemption from tax for an aircraft “sold to any person who is not a resident of this state and who will not use that aircraft in this state otherwise than in the removal of the aircraft from this state.” Sales and Use Tax Regulation 1593 in part implements and explains section 6366. In pertinent part, Regulation 1593 states:

“(b) APPLICATION OF TAX.

“(1) AIRCRAFT. Tax does not apply to the sale of and the storage, use, or other consumption of aircraft sold ... to:

“(A)

“(B)

“(C) a nonresident of California who will not use the aircraft in this state other than to remove the aircraft from California.

“(2) AIRCRAFT PARTS.

“(A) When tangible personal property becomes a component part of an aircraft described in subdivision (b)(1) as a result of maintenance, repair, overhaul, or improvement of that aircraft in compliance with FAA requirements ..., the charges for such tangible personal property, as well as for labor and services rendered with respect to the maintenance, repair, overhaul, or improvement are exempt from tax provided the aircraft will continue to be used in a manner described in subdivision (b)(1).

“(B)

“(C) The exemption described in subdivision (b)(2)(A) shall apply only under the following circumstances:

“1. the tangible personal property which becomes a component part of the aircraft is purchased on or after October 1, 1996; or,

“2. the tangible personal property which becomes a component part of the aircraft is purchased prior to October 1, 1996, but the property first enters California on or after October 1, 1996.

“(c) USE OF AIRCRAFT.

“(1) COMMON CARRIERS.

“(2) FOREIGN GOVERNMENTS.

“(3) NONRESIDENTS. A nonresident will be considered as not using the aircraft other than to remove the aircraft from California if the aircraft is promptly removed from the state and is not returned to California within 12 months after its removal from this state.

“(d) ACTIVITIES NOT AFFECTING EXEMPTION.

“(1) REPAIR OR WARRANTY SERVICE. The exemption described by subdivision (b) will not be affected if the aircraft is returned to California within the 12-month period solely for repair or service covered by warranty.

“(2)

“(3) MODIFICATION, REPAIR, OR REPLACEMENT. The work modification, repair, or replacement performed on an aircraft following its delivery and preparatory to its intended use, which is performed ... [in the case of a] nonresident prior to the aircraft’s removal from the State of California, will not disqualify the sale and use of the aircraft or its component parts from the exemption described in subdivision (b). For purposes of this subdivision [(d)(3)], flights for the sole purpose of positioning the aircraft at the modification, repair, or replacement facility will be considered

nonoperational use of the aircraft....”

In other words, a nonresident of California may purchase an aircraft in California and claim the transaction as exempt from California sales or use tax if the aircraft is not used in California other than to remove it from this state. (Reg. 1593(a)(1)(C).) Additionally, modifications, repairs, or replacements performed *prior* to the aircraft’s removal from California will not disqualify the aircraft from that exemption. (Reg. 1593(d)(3).) Nor will the return of the aircraft to California solely for repair or service *covered by warranty* within the 12-month period after its removal from this state. (Reg. 1593(d)(1).) Thus, once your aircraft left California, the only circumstance under which it could have returned to this state within the following 12 months without subjecting your purchase of it to tax is if it returned *solely* for repairs or service covered by warranty.

When you purchased your aircraft you presumably signed and gave the dealer an Aircraft Exemption Certificate in the form prescribed in subdivision (e) of Regulation 1593, since this is the only basis upon which the dealer could have deemed the sale of the aircraft to you as exempt. However, the Sales and Use Tax Law is quite clear that if a purchaser who executes an exemption certificate subsequently uses the property in a manner or for a purpose that is not within the exemption, the purchaser becomes liable for payment of the tax. As stated in Regulation 1667(b)(3):

“If a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempt from the sales tax and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of sales tax as if the purchaser were a retailer making a retail sale of the property at the time of such use and the sales price of the property to the purchaser shall be deemed the gross receipts from such retail sale.”

Thus, if your aircraft returned to California for any purpose other than repairs or service covered by warranty within 12 months of its removal from the state, you owe sales tax measured by the price that you paid the dealer for the aircraft.

Your letter indicates that you believe subdivision (d)(1) of Regulation 1593 allows the return of your aircraft to California for “ ‘repairs’ to the aircraft’s components.” However, as discussed earlier, subdivision (d)(1) is limited by its own terms “solely to repair or service covered by warranty.” Additionally, the “case” that you rely upon, Sales and Use Tax Annotation 105.0088 (3/17/92), is relevant only to exclusive and continuous use of an aircraft in *interstate commerce*, and merely states the rule that intrastate flights solely to transport an aircraft to a facility for maintenance and service will not disqualify the aircraft from the exemption for exclusive use in *interstate commerce*. The annotation does not apply to your usage of your aircraft because the exemption you claim is that of a nonresident of California, not that of an aircraft used exclusively in interstate commerce.

In summary, the only provision relevant to your inquiry is subdivision (d)(1) of Regulation 1593. Thus, if your aircraft returned to California solely for service or repair covered by warranty within the 12 months after removal, your exemption is not affected. However, any other return of the aircraft to California within 12 months after its removal forfeits the exemption, and you owe sales tax on the sale price of the aircraft to you.

I hope this information is of assistance and clarifies your understanding of Regulation 1593. Please feel free to write to us again if you have any further questions.

Sincerely,

Sharon Jarvis
Senior Tax Counsel

SJ/ef

Enclosure: Reg. 1593

cc: Ms. Mia L. Brown (MIC: 95)