

M e m o r a n d u m**105.0012**

To: Petition Unit
Attn: E. R. McLaughlin

May 30, 1986

From: Legal (TLA)

Subject: B--- G. L---
SP --T XX XXXXXX-010

J--- A. A---
SP -- XX XXXXXX-020

This is in response to your memorandum of April 7, 1986 concerning the above referenced taxpayers. You state in your memorandum that T--- M--- H--- L---, a limited partnership, consisting of B--- G. L--- and J--- A. A--- purchased a Boeing 720-023B from the O--- T--- I--- Company for \$482,000 and accepted delivery on April 12, 1984 at Long Beach, California.

The taxpayers purchased the aircraft with the intent of modifying the design in such a manner that the aircraft will be able to fly at altitudes at or in excess of 10 miles. Once the aircraft has been so modified, it is the intent of the taxpayers to set a world's record for the highest parachute drop.

The law firm of E--- and H---, which is acting as counsel on behalf of T--- M--- H--- L---, contend in their letter of March 20, 1986 that the test flights conducted by T--- M--- H--- L--- do not constitute a use of the aircraft on the basis that such test flights are exempt pursuant to Regulation 1593(c). However, counsel for T--- M--- H--- L--- concede in their letter that once the testing has been completed, the use of the aircraft at that time will be subject to tax.

Regulation 1593 is an administrative interpretation of section 6366 of the Revenue and Taxation Code. Section 6363 pertains to an exemption from sales and use tax for aircraft sold to common carriers, foreign governments, and nonresidents. Subsection (c) of Regulation 1593 provides that flights made for the purpose of determining that the aircraft will fly in accordance with specifications, made either prior to or after the sale and delivery of the aircraft to the

purchaser, do not constitute a use or consumption of the aircraft. The intent of subsection (c) of Regulation 1593 is to allow test flights of aircraft which are sold to common carriers, foreign governments, and nonresidents without disallowing the exemption which would otherwise apply pursuant to section 6366 of the Revenue and Taxation Code.

The definition of common carrier, found in Section 211 of the California Public Utilities Code, means every person and corporation providing transportation for compensation to or for the public or any portion thereof. The intended use of the aircraft by T--- M--- H--- L--- is to attempt to set a world record for high altitude parachute drops. From the information provided it does not appear that this aircraft will be held out for transportation of the public or any portion thereof. Hence, we conclude that the use of the aircraft by T--- M--- H--- L--- will not constitute common carriage. From the facts provided T--- M--- H--- L--- does not qualify either as a foreign government or a nonresident. It follows, therefore, that the exemption claimed pursuant to Section 6366 is inapplicable. It therefore follows that subsection (c) of 1593 is likewise inapplicable.

The present testing and use of the aircraft by T--- M--- H--- L--- constitutes ordinary use of the aircraft in the State of California and is subject to use tax. The use tax cannot be delayed until actual parachute drops begin.

TLA:ba