



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 322-2976
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

June 19, 1995

BURTON W. OLIVER
Executive Director

Mr. R--- P. M---
M---, S--- & Co.
Certified Public Accountants
XXXX --- ---, Suite XXX
--- ---, CA XXXXX-XXXX

Re: A--- A---, Inc.
SR -- XX-XXXXXX

Dear Mr. M---:

This is in response to the letter you sent to our San Jose District Office, dated March 6, 1995, regarding the application of tax to the activities of an air taxi operation. In your letter, which was referred to the Legal Division for response, you state:

"Taxpayer, A--- A--- (A---), is an air taxi operation, qualifying as a FAR Part 135 common carrier. In its ordinary course of business, A--- manages aircraft owned by various clients. A--- charts the managed aircraft in their air taxi FAR 135 operations. As part of the management agreement, A--- arranges maintenance and repairs required on the aircraft. The maintenance and repairs include labor and parts. In many cases, the actual maintenance and repair work is performed by companies located out-of-state. A--- pays the company doing the repairs and then bills their client for the maintenance and repair work performed. Upon completion of the repair/maintenance work, the aircraft is flown back into California to be used in its Far 135 operation. Currently, A--- charges sales tax for the maintenance and repair work performed out-of-state."

You then ask whether A--- is required to collect or pay sales or use tax with respect to maintenance and repair work performed out-of-state on aircraft used in an air taxi operation as a common carrier. You state your belief that such repair work should not be subject to California

sales or use tax because the parts used become an integral part of the aircraft while the aircraft is out of state.

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California, unless that use is specifically exempt from tax by statute. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620.)

Since you inquire about circumstances in which the sales of the aircraft parts take place outside of California, the use tax, rather than the sales tax, is applicable. Thus, the purchaser owes use tax with respect to property purchased for use inside California unless the use is exempt or excluded from tax by statute.

The relevant exemptions are provided in Revenue and Taxation Code sections 6366 and 6366.1. Section 6366 applies where aircraft is sold to persons using the aircraft as a common carrier. Section 6366.1 provides a similar exemption with respect to the lease of an aircraft to a person who will use the aircraft as a common carrier. You have not provided us with a copy of the management agreement. Although it is not entirely clear, it appears that A--- leases the aircraft from its owner; if so, the relevant exemption is set forth in section 6366.1, which states:

"(a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of and the storage, use, or other consumption in this state of aircraft which are leased, or are sold to persons for the purpose of leasing, to lessees using such aircraft as common carriers of persons or property under authority of the laws of this state, of the United States or any foreign government, or to any foreign government as lessees for use by such government outside the state, or to persons as lessees who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state.

"(b) There are exempted from the taxes imposed by this part, the gross receipts from the sale of and the storage, use, or other consumption in this state of tangible personal property sold to an aircraft manufacturer and incorporated into aircraft to be leased by the manufacturer under conditions set forth in subdivision (a) of this section.

"(c) For purposes of this section, it shall be rebuttably presumed that the aircraft is not regularly used in the business of transporting for hire property or persons if the yearly gross receipts of the lessor from the lease of that aircraft to persons using that aircraft as common carriers of property or persons do not exceed 10 percent of the cost of the aircraft to the lessor, or twenty-five thousand dollars (\$25,000), whichever is less."

The exemption set forth in section 6366.1 applies only to complete aircraft, not aircraft parts. However, we agree that when the aircraft enters California after maintenance and repair work have taken place, the tangible personal property attached during the repair and maintenance work will have become an integral part of the aircraft. (Pan American World Airways, Inc. v. State Board of Equalization (1955) 131 Cal.App.2d 638, Flying Tiger Line, Inc., v. State Board of Equalization (1958) 157 Cal.App.2d 85.) That is, when aircraft parts are installed onto aircraft outside California and first enter this state as part of the aircraft, the parts themselves are regarded as "aircraft" for purposes of section 6366.1.

As stated above, the section 6366.1 exemption from use tax applies to the storage, use, or other consumption of aircraft sold to persons leasing such aircraft for use as common carriers of persons or property under relevant governmental authority. Subdivision (b) of Regulation 1593, a copy of which is enclosed, explains that in determining whether a purchaser is using aircraft as a common carrier, only that use of the aircraft by the carrier during the first twelve consecutive months commencing with the first operational use of the aircraft will be considered. "Operational use" means the actual time during which the aircraft is operated, but does not include storage, test flights, modification, repair, or replacement.

The term "common carrier" means any person who engages in the business of transporting persons or property for hire or compensation and who offers its services indiscriminately to the public or to some portion of the public. (Reg. 1593(a).) You state that A--- A--- qualifies as a common carrier, but you have not explained how A--- will use the aircraft. If A---'s air taxi operation actually uses the aircraft as a common carrier for more than one-half of the operational use of the aircraft during the applicable test period, A---'s principal use of the aircraft will be deemed to be that of a common carrier, except as provided in subdivision (b)(1)(D) of Regulation 1593, and such use of the aircraft will be exempt from tax.

Please note that for purposes of applying the exemption to the use of the parts that have become "aircraft" as discussed above, the test period for any part in question is the twelve-month period following that part's entry into California. Thus, even if the use of the aircraft qualifies for the common carrier exemption, that does not mean that the use of the parts automatically qualifies. If the aircraft on which a part is installed is not used principally as a common carrier during the twelve months following the part's first entry into this state, use tax applies to the use of that part in California.

Mr. R--- P. M---

-4-

June 19, 1995
105.0018

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: San Jose District Administrator
District Principal Auditor