

**M e m o r a n d u m****105.0085**

To: Mr. J. W. Cornelius  
Supervisor, Petition Section

May 14, 1991

From: David H. Levine  
Senior Tax Counsel

ATSS 485-5550  
(916) 445-5550

Subject: Common Carrier Exemption

In a memorandum dated April 16, 1991, I responded to your inquiry regarding the application of the common carrier exemptions provided by section 6366 and 6366.1 and Regulation 1593. It has now come to my attention that the subject of your inquiry was also the subject of much wrangling a number of years ago, and I believe that some further discussion in the context of my April 26 memorandum is appropriate. I assume that you were not aware of the previous opinions on this issue since, had you been, you would have so advised us.

In your inquiry, you noted that, with the exception of ferry flights made in connection with an otherwise qualifying common carriage flight, it had been the policy of the Petition Section to grant or deny claims for common carrier exemption using the guidelines established pursuant to FAR Part 135.1. In my memorandum, I concluded that operating pursuant to Part 135 was not a requirement for the exemption from California Sales or Use Tax. Rather, I concluded that: the aircraft must be used as a common carrier; and that use must be under the authority of this state or under the authority of the United States. This was the main focus of my memorandum and remains the applicable rule.

Your inquiry was specifically in the context of firefighting flights and external load operations. Since the main focus of my memorandum was to clarify that an aircraft operated pursuant to some Part other than 135 could still qualify for the common carrier exemption, my reference to the firefighting flights and external load operations will qualify as common carrier use provided: the flight transports persons or property for compensation; are offered indiscriminately to the public or to some portion of the public; and the flights are authorized by the person's FAA certificate. Again, these conclusions remain applicable, but a bit more discussion would have been helpful.

When a person provides carriage for firefighters from Point A to Point B, that flight qualifies as a common carrier flight if meeting the other requirements. Similarly, if that person provides carriage of firefighting supplies picked up at Point A and delivered to Point B, that flight also qualifies as common carrier flight if meeting the other requirements. On the other hand, if that same

person carries water in its aircraft from Point A and drops the water on a fire at Point B, we would not regard that flight as qualifying as a common carrier flight. That is, we do not regard such a flight as for the purpose of transporting persons or property for compensation but rather as a flight to provide the service of firefighting. The same analysis would apply, for example, to cropdusting. Even though the aircraft carries the dusting material from one point to the location of the fields, we do not regard such a flight as for the purpose of transporting property for compensation. Rather, we regard that flight as for the agricultural service of cropdusting. Such a flight does not qualify as a common carrier flight.

If you have further questions on this subject, feel free to contact me.

DHL:cl

bc: Mr. Donald J. Hennessy