

**STATE BOARD OF EQUALIZATION**

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April 8, 1992

Mr. R--- H. M---
Certified Public Accountant
XXX --- Street
--- ---, California XXXXX

Re: Application of Tax to Purchases of Aircrafts and Gliders
Client: C--- A---
SP UT XX-XXXXXXX, SP UT XX-XXXXXXX

Dear Mr. M---:

This is in response to your letter dated February 6, 1992. In your letter your state:

"This letter is written on behalf of our client, C--- A---, XXXX ---, --- --- ---, Ca, XXXXX, SSN XXX-XX-XXXX. We are requesting a determination as to whether or not the purchases of aircraft by our client are exempt from sales tax pursuant to Regulation 1593. Relevant facts pertaining to this matter are:

- a. Our client operated a gliderport in ---, California.
- b. Our client purchased two tow planes (single engine aircraft) and seven gliders. All nine aircraft have been, are, and will be solely used in the operation of the gliderport. The total cost of all aircraft exceeded \$270,000.
- c. The operations of the glideport are as follows:
 - Members of the general public pay a fee for a glider ride.
 - The tow plane tows the glider into the air and releases the glider. The glider soars for a period of generally 15-30 minutes and then lands. Both the tow plane and glider are piloted by employees of the gliderport.

d. Average monthly gross receipts exceeded \$27,000. Therefore the yearly gross receipts from the use of each aircraft easily exceeded the purchase cost of each aircraft."

In your opinion your client is a person engaged in common carriage and therefore his purchases are exempt under Regulation 1593.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. All gross receipts from sales of tangible personal property are presumed taxable until the contrary is established. Rev. & Tax. Code section 6091.

Regulation 1593 is based upon Revenue and Taxation Code section 6366 which provides, in pertinent part, as follows:

"There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption of aircraft sold to persons 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. . . .

"For purposes of this section, it shall be rebuttably presumed that a person is not engaged in business as a common carrier of person or property if the yearly gross receipts of that person from the use of that aircraft in the transportation of persons or property do not exceed 10 percent of the purchase cost of the aircraft to him or her, or twenty-five thousand dollars (\$25,000), whichever is less."

"Aircraft" means any contrivance designed for powered navigation in the air except a rocket or missile. Rev. & Tax. Code § 6274. Gliders are not aircraft as defined in this section because they are not powered contrivances. Business Tax Law Guide, Sales and Use Tax Annotation 105.0100. Since gliders are not aircraft, the exemption under section 6366 does not apply to sales of gliders, and your client's purchases of the gliders are taxable. Nor are the purchases of the two tow planes exempt because your client is not using these planes as common carriers of property or persons. Rather, these planes are used to tow property of your client.

If your client purchased the planes and gliders ex tax by certifying in writing to the sellers that these items would be used for exempt purposes, your client must pay sales tax, measured by the cost of the items to him, as if he were the retailer making retail sales of the property. Rev. & Tax. Code § 6421.

Mr. R--- H. M---

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If you have further questions regarding sales and use tax law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

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