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450 N STREET, SACRAMENTO, CALIFORNIA
(P. O. BOX 942879, SACRAMENTO, CA 94279-0082)
TELEPHONE: (916) 327-2291
FAX: (916) 323-3387

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January 31, 1996

Mr. J--- L. J---
B--- & H---
XXX --- Boulevard
--- ---, CA XXXXX-XXXX

Re: G--- FDIC

Dear Mr. J---:

This is in response to your letter dated November 2, 1995 in which you inquired about the sales of three aircraft which have been foreclosed and repossessed by your client, the Federal Deposit Insurance Corporation (FDIC), acting as a receiver on behalf of G---.

You explain that the FDIC is selling two of the aircraft to B--- S--- Limited (B--- S---), a Hong Kong corporation which may be doing business in California as O--- H---. It is your understanding that B--- S--- intends to export these aircraft to the Philippines. The other aircraft will be sold to V--- A--- of Canada (V---). You do not know if V--- has any business contacts or nexus in California; however, it is your understanding that V--- intends to export this aircraft to Canada.

The drafted sales agreements for the sales of these aircraft provide that transfer of possession and title will occur at Long Beach Airport where the aircraft are currently stored. You have explained that employees or representatives of the respective purchasers will be responsible for piloting the aircraft to their intended destinations. Although the drafts of the sales agreements provide that the purchasers of the aircraft will be liable for any taxes which arise out of these anticipated transfers, you are concerned that FDIC may be liable for collecting any use tax that might be owed. This concern is based on Business Taxes Law Guide (BTLG) Annotation 505.0330 (4/16/91; 1/22/92; 2/1/93) which provides that:

“Resolution Trust Corporation (RTC). RTC when acting in the role of a conservator, is regarded as an incorporated agency or instrumentality of the United States, and sales to the RTC, including leases, are exempt from California sales and use tax. However, tangible personal property purchased from an incorporated agency or instrumentality, such as the RTC, is subject to use tax. If

the property is purchased for use in California, use tax must be collected by RTC. The RTC was created to replace FSLIC as receiver for failed thrifts. The context and language of its creation, to act in the place of FSLIC, makes it clear that RTC shall be treated the same as the FDIC and FSLIC (12 U.S.C. Section 1421 et seq.).”

You have inquired whether the FDIC is required to collect use tax if the sales of these aircraft are considered to be sales for export as explained by Regulation 1620.

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.)

While your inquiry focuses on the provisions of Regulation 1620, which explain the application of sales and use tax on sales in interstate and foreign commerce, Revenue and Taxation Code section 6283 and Regulation 1610, copy enclosed, are the authorities that should first be considered to determine if the sales of these aircraft are subject to California's sales or use tax. Revenue and Taxation Code section 6283 provides that gross receipts from the sales of aircraft, as defined by Regulation 1610(a), are exempted from the computation of sales tax when the seller is not a dealer of aircraft. Under these circumstances, the applicable tax would be the use tax, which is imposed on the purchaser, unless the purchase of the airplane is otherwise exempt, i.e., purchased for use in interstate or foreign commerce. (Regulation 1610((c)(2)(A).) While Annotation 505.0330 provides that the RTC is required to collect use tax on certain transactions, this annotation is limited to those types of sales which are ordinarily subject to sales tax. Since, FDIC is not a dealer in aircraft, sales tax would not apply to these three proposed sales of aircraft. Accordingly, Annotation 505.0330 does not apply, and FDIC is not required to collect use tax from the purchasers of these airplanes.

You have stated that the draft sales agreements for these aircraft provide that transfer of title and possession will occur at the Long Beach Airport. If the sales of these aircraft were subject to sales tax, acceptance of delivery in California could subject the purchase of the aircraft to sales tax even if the only use made of the aircraft would be removal from this state to the intended foreign destination. (Regulation 1620(a)(3)(C)1.) However, since this transaction is subject to the use tax provisions, rather than the sales tax provisions, acceptance of delivery in California may not be subject to use tax if the airplane is subsequently transported outside the state for use solely outside of California. (Rev. & Tax. Code § 6009.1; Stockton Kenworth, Inc. v. State Bd. Of Equalization (1984) 157 Cal. App. 3d 224; 203 Cal. Rptr. 698.) Since we have not been contacted by the purchasers nor are we fully apprised of the circumstances surrounding the anticipated usage of the aircraft, the foregoing analysis does not purport to establish the use tax obligations of either B--- S--- or V---.

I hope that this answers your questions. If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Staff Counsel

PHJ:cl

Enclosure (Reg. 1610)

cc: Norwalk District Administrator