

M e m o r a n d u m**105.0130**

To: Mr. Gordon Bennett
Occasional Sales Unit

January 27, 1986

From: Teresa Armstrong
Legal

Subject: J. M--- F---

SP UT XX XXXXXX

You requested an opinion as to whether a hot air balloon operation falls within the "common carrier" exemption for sales or use tax.

The letter from the taxpayer states that he purchased a hot air balloon in late 1984 for use in his commercial balloon operation in ---, California. During the past 12 months he used the balloon approximately 63 percent of the time for commercial charters, 13 percent for pilot instruction and 14 percent for personal use. The commercial operation of the hot air balloon consists of taking individuals or groups on sightseeing tours. The hot air balloon is equipped with a heating device which allows the operator to regulate the vertical lift of the balloon. Directional travel is accomplished by elevating or lowering the balloon into an airstream flowing in the desired direction. Travel in certain directions may be limited by the prevailing weather patterns.

The flight record which was attached to the letter indicates that the hot air balloon was purchased outside of the State of California. The balloon was brought into California and put into use within 90 days of purchase. Section 6202 of the Revenue and Taxation Code imposes a use tax on "every person storing, using, or otherwise consuming in this state tangible personal property..." the use of the hot air balloon in this State will subject the taxpayer to use tax liability, unless otherwise exempt.

The common carrier exemption to sales and use tax is found in section 6366 of the Revenue and Taxation Code. This exemption is restricted to those who use aircraft as a common carrier of persons or property under authority of the laws of the State of California, of the United States or any foreign government.

Aircraft, as defined in Section 6274, Revenue and Taxation Code, means any contrivance designed for powered navigation in the air except a rocket or a missile. The question of whether a hot air balloon is an "aircraft" hinges upon the definition of "powered navigation." Webster's defines the term "navigate" as "to operate or control the course of (as an airplane)." The powered

heating unit installed on the hot air balloon allows the operator to control the altitude of the balloon. Horizontal movement, however, is subject to the movement of the wind or air flow. While the operator may select a course of direction by raising or lowering the balloon into the desired air flow, the actual movement and control is caused by the air flow and not a powered navigational unit. This is typified by the fact that under certain weather conditions the operator may not be able to dictate the direction of travel. For these reasons it must be concluded that a hot air balloon is not an "aircraft" within the meaning of section 6274.

If we are correct in assuming that the hot air balloon was purchased outside of California the taxpayer may credit any sales tax paid to the other state against the use tax imposed by this state (Rev. & Tax. Code §6406).

TA:ba