

various points within and without the United States. In the course of its travels, the aircraft will likely enter California. However, it is anticipated that the aircraft will not enter the State within the first 90 days after the client's acquisition and first functional use of the aircraft outside the State. It is anticipated that the aircraft will always be hangared outside the State. However, the client may eventually hangar the aircraft at an airport located in California."

You cite subdivision (b)(3) of Regulation 1620 which explains when a person is regarded as purchasing property for use in California. You note that subdivision (b) of Regulation 1593 excludes certain uses (such as modification and repair) from the term "operational use" for purposes of the common carrier exemption. You believe, however, that Regulation 1593 does not apply to the situation you pose since your client is not claiming an exemption for common carrier use under Revenue and Taxation Code section 6366 or 6366.1. We agree. The provisions of Regulation 1620 govern whether the purchaser is regarded as having purchased the aircraft for use in California. Only if the aircraft were regarded as purchased for use in California would the provisions of Regulation 1593 be relevant to the determination of whether the purchaser owed use tax. Furthermore, even if the aircraft is purchased for use in California, the provisions of Regulation 1593 are relevant only if the purchaser is claiming exemption from the otherwise applicable use tax based on common carrier use.

You believe that under the provisions of Regulation 1620, if the aircraft does not enter California prior to the purchase of the modifications and does not enter California within 90 days of the purchase (and first functional use) of the modifications, California use tax will not apply to either the purchase of the aircraft or the purchase of the modifications. We agree with this statement, provided the aircraft and the modifications are used outside California for more than 90 days prior to their first entry into California, excluding time of shipment and time of storage for shipment to California.

You recognize that the test period applicable to the modifications is a separate period from that for the aircraft. That is, if the aircraft is used outside California for 100 days prior to its first entry into California, use tax will not apply to its use in this state. If modifications are performed after 50 days of use outside California, and then the aircraft, with those modifications, enters California 50 days later, the modifications will be presumed to have been purchased for use in California, since they entered within 90 days of purchase, even though the aircraft will not be regarded as having been purchased for use in this state. Thus, use tax will apply to the purchase price of the modifications unless the modifications (i.e., the modified aircraft) is used or stored outside California one-half or more of the time during the six-month period immediately following the first entry of those modifications into California (i.e., date that the aircraft *with* the modifications first entered the state).

Mr. M--- J. K---

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July 9, 1996
325.0002.200

If you have further questions, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl

cc: San Francisco District Administrator