

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

January 2, 1991

Mr. T--- L. P---
A--- & P---
XXX South --- Street, Suite XXX
--- ---, California XXXXX

RE: N--- M--- E---, Inc.
SY -- XX-XXXXXX

Dear Mr. P---:

This is in response to your letter dated October 10, 1990. N--- M--- E---, Inc. (the Company) intends to purchase an aircraft. You ask whether the Company's use of the aircraft in California will be subject to use tax under the following facts:

"The Company will receive delivery of and take title to the Aircraft outside of California. At the time of its first entry into California (which may be its first flight after acquisition), the Aircraft either will (a) be carrying at least one passenger who has a destination in a state (or country) other than the state (or country) of his departure, or (b) be flown into California empty to pick up at least one specific individual who will have a destination outside California. For at least six months following the Aircraft's first entry into California, each flight segment within California (1) will have a least one passenger that ha a destination outside of California, (2) will be returning empty to California after a flight described in (1), or (3) will be flown empty to a location to prepare for a use described in (1). It is currently intended that the Aircraft will be principally hanged at Van Nuys Airport."

You note that subdivision (b)(2)(B) of Regulation 1620 provides that use tax does not apply to property purchased for use and used in interstate or foreign commerce prior to its first entry into this state and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California. You also cite Annotation 570.0430 which sets forth the following four-part test to determine whether the use of a vehicle purchased outside California is subject to California use tax (the same rules apply to use of aircraft): 1) If the first functional use is in California, the purchase price is subject to use tax; 2) if the vehicle is first functionally used outside California but brought into California within 90 days from the date of

purchase, it is presumed that it was purchased for use in California and use tax applies unless tests 3 or 4 call for a different result; 3) tax applies if within the first six months after the vehicle's entry into California it is used more than one-half of the time within California unless test 4 calls for a different result; and 4) if the vehicle first enters California while being functionally used in interstate commerce and is used continuously in interstate commerce while in California, then use tax does not apply as set forth in subdivision (b) of Regulation 1620.

As described in the fourth paragraph of the annotation, we agree that under the facts you present the aircraft will first enter California while being functionally used in interstate commerce. We also will agree that if the aircraft is used as described in your scenarios (1) and (2), that use will be regarded as interstate use. However, the use described in your scenario (3) may or may not be regarded as use in interstate commerce. For example, if the aircraft is located at San Francisco International Airport and is dispatched to Los Angeles International Airport to pick up specific passengers who will then proceed on to Chicago, we would regard the SFO/LAX leg as part of the interstate journey. On the other hand, if the aircraft is dispatched from SFO to Van Nuys Airport without a specific out-of-state destination thereafter, that leg would not be part of an interstate journey. If the aircraft first enters California as you have described in (a) or (b) and thereafter is used as you have described in (1) and (2) during the first six months after its entry into California, California use tax will not apply to the use of the aircraft in California. As discussed above, use as you have described in (3) may or may not be regarded as interstate use. If the aircraft is used in a manner not regarded as interstate use during the first six months after the aircraft's entry into California, the use of the aircraft in California may be subject to use tax.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

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Mr. T--- L. P---
A--- & P---
XXX South --- Street, Suite XXX
--- ---, California XXXXX

RE: N--- M--- E---, Inc.
SY -- XX-XXXXXX

Dear Mr. Polley:

In response to a previous inquiry, I analyzed whether your client's use of an aircraft in California would be regarded as continuous use in interstate commerce making your client's purchase exempt from use tax. In a letter dated November 27, 1990, you have additional questions and also ask for certain clarification and reconsideration. Each of your questions is quoted below followed by our response.

"1. Does the California sales tax apply to the purchase of the aircraft as described in the Ruling Request?"

I did not address this question in my previous letter since I know that you understand the sales tax does not apply to this transaction. However, your client would like to see that in writing from us. Sales tax applies only to sales that occur inside California Territorial limits. When the sale of the subject tangible personal property occurs outside California territorial limits, the applicable tax, if any, is the use tax and not the sales tax. Since the sale of the aircraft in question will occur outside California, no sales tax will apply to the sale. N--- M--- will owe use tax on its purchase if it purchases the aircraft for use in California unless that use is exempt from use tax.

"2. Gulfstream maintains a maintenance facility at Long Beach Airport. Would flights to and from Long Beach, California (or other locations in California) solely for the purpose of maintenance be considered an intrastate use so as to subject the aircraft to the California use tax?"

We regard such flights as incidental to interstate use provided the aircraft is otherwise used continuously in interstate commerce both inside and outside California and not

exclusively in California. Of course, if any such flight has an additional purpose, such as carrying cargo or passengers, that flight would not be regarded as incidental to interstate use.

3. “With respect to scenario (3) in the Ruling Request, you indicated in your Ruling that if the aircraft was located at San Francisco International Airport and was dispatched empty to Van Nuys Airport without a specific out-of-state destination thereafter, the San Francisco to Van Nuys leg would be considered an intrastate use, subjecting the aircraft to use tax if occurring within six months of the aircraft’s entry into California. If a passenger, having an out-of-state origin, is dropped off in San Francisco, would the trip from San Francisco to Van Nuys (the aircraft’s place of principal hanger), with the aircraft empty, be considered a part of the just completed interstate trip?”

Yes, provided that trip is part of the continuous journey from outside California and was part of the original flight plan. Of course, if any passengers or cargo are loaded in San Francisco, the trip will be regarded as an intrastate use.

“4. You indicated flights wholly within California conducted solely for training pilots and other personnel would be considered to be an intrastate use. Would training flights having a non-California destination be considered an interstate use?”

After further consideration, we have concluded that training flights are incidental to interstate use provided the aircraft is otherwise used continuously in interstate commerce. Training flights qualifying as incidental are those that are for the purpose of training those personnel who will fly that particular aircraft (not personnel who will fly that type of aircraft).

If you have any further questions, feel free to write me again.

Sincerely,

David H. Levine
Senior Tax Counsel

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