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LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 324-2637
FAX: (916) 323-3387

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August 13, 1996

E. L. Sorensen, Jr.
Executive Director

Mr. J--- A. V---
---, --- & ---
XXXXX --- --- Street, Suite XXX
---, California XXXXX

Re: Unidentified Taxpayer;
Sale/Use of a Jet Aircraft

Dear Mr. V---:

This is in response to your letter dated July 26, 1996 regarding the application of tax on your client's purchase and use of a jet aircraft.

You state:

"[M]y client intends to take delivery of an Astra jet aircraft in Portland, Oregon, on Friday, July 26th. With him will be his two pilots who have been previously certified on the aircraft.

"When he takes delivery in Portland, the aircraft will be flown to Reno, Nevada. However, on the trip to Reno, Nevada, my client will perform at least three landings and takeoffs for purposes of his certification as a pilot on the aircraft. The aircraft will be based in Reno for 91 - 100 days and flown to non-California locations during this time.

"My client will lease the aircraft to a corporation which will utilize the aircraft in its transportation of corporate personnel. It is anticipated that the aircraft will be used both inside and outside the United States in ferrying corporate personnel."

We understand your letter to ask whether tax applies to your client's purchase and use of the aircraft.

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for storage, use, or other consumption of that property in California. (Rev. & Tax. Code §§ 6201, 6401.)¹ Regulation 1620(b)(3) explains when property purchased outside California is regarded as purchased for use inside this state:

“[P]roperty purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. When the property is first functionally used outside California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time during the six month period immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.

“For purposes of this subparagraph ‘functional use’ means use for the purposes for which the property was designed.”

That is, property purchased outside California is regarded as purchased for use in this state (and subject to use tax) where the property is first functionally used inside this state, or where the property is brought into this state within 90 days after its purchase unless the property is used or stored outside California one-half or more of the time during the six-month period immediately following its entry into this state.

We assume in this case that the sale of the aircraft to your client occurred outside this state. This means that your client owes use tax measured by the sales price of the aircraft only if your client first functionally used the aircraft in California or the aircraft is regarded as having been purchased for use inside this state.

You state that the aircraft will be flown from Portland, Oregon to Reno, Nevada during which your client will perform at least three landings and take-offs² for purposes of obtaining certification as a pilot for the aircraft. Under these facts, we regard the aircraft as first

¹ This tax is imposed on the person actually storing, using, or otherwise consuming the property within the state. (Rev. & Tax. Code § 6202.)

² We assume that these “landings and take-offs” will occur outside California.

functionally used outside California when your client flies it in order to obtain pilot certification. You also state that the aircraft will be based in Reno for 91 - 100 days and flown to non-California locations during that time. We understand this to mean that the aircraft will not be brought into California within 90 days after its purchase exclusive of any time of storage for shipment to California. Under these facts, we do not regard the aircraft as purchased for use inside this state. This means that use tax does not apply to your client's transaction provided the aircraft does not in fact enter into California within 90 days of its purchase. If the aircraft does enter California within 90 days after its purchase, use tax will apply measured by the sales price of the aircraft unless the aircraft is stored or used outside California one-half or more of the time during the six-month period immediately following its entry into this state.

Please note that Revenue and Taxation Code section 6596 sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when reasonably relying on a written response to a written request for opinion. To come within that section, the request for opinion must identify the taxpayer as well as all relevant facts relating to the particular transaction. Our opinion above does not come within section 6596 since the transaction has already taken place and since you have not identified and have not fully described all relevant facts regarding your client's transaction.

If you have any additional questions, please write again.

Sincerely,

Warren L. Astleford
Tax Counsel

WLA:rz

cc: Norwalk District Administrator - (AA)