

M e m o r a n d u m**330.1900**

To: Marysville – Dist. Admin.

Date: October 5, 1965

From: Tax Counsel (RHA)

Subject: Classification of Recreational Vehicles and Vans

Sales or Use Tax on Boats and Airplanes
Your Memorandum of September 15, 1965

Note: this memo written before special rules adopted for MTE (§6006 (g) (4), 6010 (e) (4), 6023) That is, all properly discussed here treated as general TPP. DHL

330.1840 revised 10-25-89 and moved to new annotation # 335.0003.

CLD #460 1-8-90

1. A person purchases a marina including boats and the transaction is exempt under Section 6281.

(a) Tax will apply to receipts from rentals of the boats.

(b) Taxpayer has no election to pay sales tax in lieu of tax on the rental receipts since he cannot elect to pay tax on a transaction that is exempt under the law.

(c) If the transaction is not exempt under Section 6281 and the purchaser pays use tax to the Board, he may rent the boats without sales or use tax liability.

(d) If the transaction is not exempt under Section 6281, but the purchaser has a seller's permit, he may elect to report and pay tax on the receipts from boat rentals. Of course, he would have to make the declaration to the Board if he were required to pay use tax to the Board. Giving a resale certificate to the seller would be meaningless under AB 1 if the seller of the boats is not required to report and pay tax on the sale. If the seller is liable for tax on the sale of the boats (as a boat dealer), the purchaser may give him a resale certificate or reimburse the seller for the tax.

2. An airplane is rented and a charge is added to rental price for: (a) flight instruction; (b) services of a pilot to fly the plane.

(a) A student pilot who secures the services of a pilot for flight instruction is not renting a plane as such, but is buying flight instruction. Tax will apply to specific charges made for rental of the plane even though flight instruction is a business activity of the firm owning the plane. A separate charge for flight instruction is not subject to tax. If billed on a lump sum, the total charge is exempt as the primary purpose of the transaction is flight instruction (a service) and not renting a plane.

(b) Charter service rentals that include charges for a pilot to fly the plane, billed separately, are receipts from renting the plane and furnishing a pilot to fly it. Separately stated charges for the pilot (if services of the pilot are optional) are not subject to tax. Charges for the rental of the plane are taxable. If billed on a lump sum, the total charge is taxable since the primary purpose of the transaction is a rental and the pilot services are comparable to services connected with a sale.

Note: This is based on premise that transaction is a lease. If truly a character, aircraft owner is consumer, tax due on purchase price of aircraft. (see, generally, Entremont Whitsell (1939) 13 cal. 2d.290.) DHL

3. A person purchases an airplane out of state from an airplane dealer or private party and enters California in less than 90 days from the date of delivery of the plane.

(a) It is presumed that the purchase was made for use in California, and use tax applies to the purchase price of the plane.

(b) Tax will not apply to receipts from rental of the plane if use tax has been paid.

(c) Taxpayer may elect to pay the use tax on the rental receipts if he is in a bona fide business of renting airplanes. If rental is only incidental to his private ownership and use of the plane, he may not elect to pay tax on rental receipts in lieu of paying the use tax. Reference is made to Ruling 70, subparagraph 3(C)

(d) In the case of purchases from private parties, use tax applies to the purchase price of the plane since, under Section 6275 of the Sales and Use Tax Law, every person making any retail sale of an airplane is a retailer.

4. A person purchases an airplane from an out-of-state dealer or a private party and enters California with the airplane over 90 days from the date of delivery of the plane.

(a) It is presumed that he did not purchase the plane for use in California, and use tax will not be applicable.

(b) Tax will apply to receipts from renting the plane.

(c) Taxpayer may elect to pay the use tax on the airplane in lieu of paying tax on rental receipts on the theory that in so doing, he admits he purchased the plane for use in California.

RHA:md [lb]

Note: Changes to Rev. & Tax. Code § 6248 for aircraft purchases between 10/1/04 and 6/30/06.
SPJ 1/27/05