



STATE BOARD OF EQUALIZATION

December 7, 1964

Attention: _____

Gentlemen:

We have reviewed your claim for refund for sales and use tax in the light of information obtained at the preliminary hearing on this matter.

You have contended that the aircraft in question is exempt from use tax under provisions of section 6366 of the Revenue and Taxation Code. You have also contended that the aircraft was not purchased for use in California since it was used more than one-half of the time in interstate commerce.

It is our opinion that your firm does not qualify as a certificated or licensed carrier within the meaning of section 6366 of the code. We direct your attention to 15 Ops. Cal. Atty Gen. 34 wherein the Attorney General answered our inquiry as to whether a non-scheduled air cargo carrier qualified for the exemption. This opinion contains the following statement:

“It seems reasonably clear that when the California Legislature used the words ‘certificated’ or ‘licensed’ carrier, it meant more than merely authorized to operate as a carrier. The Legislature apparently intended to grant an exemption to carriers whose usefulness and dependability had been passed upon by the federal government and which had been granted a certificate or license on the basis of this determination.”

As a general rule, we regard only carrier certificated or licensed under the Civil Aeronautics Board’s economic regulations as qualifying for the exemption provided by this section.

Our review of the field auditor’s analysis discloses that during the six-month period immediately following the aircraft’s entry into California, it was flown 145.8 total hours; 68.7 of these hours involved trips wholly within California and 38.1 hours involved the estimated California time logged on interstate trips. After entry, the aircraft was physically located in California 144 days and outside California 38 days during the first six-month period.

Sales and use tax ruling 55 provides guidelines for taxation of transactions involved with interstate and foreign commerce. It provides in part:

“(b) Use tax applies with respect to any tangible personal property purchased for storage, use or other consumption in this state...except property purchased for use in interstate or foreign commerce, placed in use in interstate or foreign commerce

prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce. (Emphasis added.)

The aircraft in question was used for a substantial time wholly in intrastate commerce. Therefore, it was not used continuously in interstate commerce within the meaning of the above quoted provision.

The remaining issue is whether or not the aircraft was purchased for use in California. Where tangible personal property is purchased outside California, used initially outside this state but brought to California and thereafter used in multi-state operations, the board uses a “principal use” test to determine if the property was purchased for use in California. In this situation, the board has the established administrative practice of levying the use tax on the property if it is brought to California within ninety days of the date of purchase and stored, used or otherwise consumed in this state over one half the time during the first six-month period after entering the state. We believe this is a reasonable test for determining the place of principal use, and it has been expressly approved by the courts.

At the preliminary hearing you specifically disagreed with the inclusion of the California portion of interstate trips in determining the total hours logged in California. We believe the field auditor was correct in including these hours.

In determining if the property was purchased for use in California, the character of the use is immaterial (see *Western Pacific Railroad Co. v. State Board of Equalization*, 213 Cal. App. 2d 20). Additionally, it should be pointed out that “use” includes “storage.” Under the provisions of § 6008 of the Revenue and Taxation storage is defined as:

“...any keeping or retention in this State for any purpose except sale in the regular course of business or subsequent use solely outside this State of tangible personal property purchased from a retailer.”

Excluding all flight time, California storage alone is sufficient to support a finding that the principal use of the aircraft was in California.

In view of the above, it is our opinion that the aircraft was properly determined to be purchased for use in California. Accordingly, we have recommended that your claim for refund be denied. You will receive notice of action taken by the board in due course.

Very truly yours,

W. E. Burkett
Associate Tax Counsel