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**STATE BOARD OF EQUALIZATION**

October 4, 1960

This is in regard to our telephone conversation of September 24 concerning the application of use tax to the use of an aircraft in this State by the lessee thereof.

It is our understanding that A, a certificated carrier, sold an airplane to B, a noncertificated carrier, and delivered it at a point outside this State. B then agreed to lease the plane to C, for use in foreign commerce. B will fly the plane into this State, and have it overhauled in this State. B then will transfer possession to C, the lessee, who thereafter will fly it overseas on a revenue flight. C does not plan to fly the airplane back to this State.

Following are excerpts from the letter which was mentioned in our telephone conversation, which appears to be applicable to the situation described:

“1. A person who purchases a plane outside of California, takes delivery and title to the plane outside of California, executes a lease and delivers the plane to a lessee outside of California does not incur liability for California use tax, whether or not he is a California resident or the holder of a seller’s permit. The execution of the lease in California, if everything else were the same, would not itself cause the tax to apply.

“ The bringing of the aircraft into California solely for the purpose of storing it until a lease was executed and then delivering it to the lessee outside of California for use outside of California would not result in application of the tax. Section 6009.1 would prevent the storage from giving rise to tax liability, it being assumed that the subsequent use of the plane would be entirely outside this State. Section 6009.1 would also exempt the plane from the use tax if it were repaired or modified in this State for subsequent use solely outside the State. The fact that such excluded use as repairing or modifying occurred at the end of one lease and before another would not appear to be material, again on the assumption that the subsequent use by leasing or otherwise occurs entirely outside this State.”

It is likewise our opinion that, although the use of the plane by the lessee for a revenue flight to an overseas port is attributable to the lessor, no use tax liability will be incurred thereby, inasmuch as the principal use of the plane will be made outside this State.

If we can be of further assistance, do not hesitate to call on us.

Very truly yours,

George A. Trigueros  
Associate Tax Counsel