STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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September 13, 2001

VIA: FACSIMILE AND MAIL

Re: ***Aircraft Being Repaired Exemption – Section 220***
Revised Opinion

Dear Mr. :

This is in response to your September 10, 2001 inquiry and additional corrected facts, questioning whether certain out-of-state aircraft owned by G and leased by LLC ("A") would be exempt from personal property tax. Specifically, you ask, "Since all the aircraft must be maintained, updated and serviced under A's FAA-approved maintenance program until returned to the lessor in 2003, does this satisfy the tax code requirements for exemption under section 220?" For the reasons hereinafter set forth, assuming they are commercial aircraft normally based out-of-state but coming into California for storage and servicing, and possibly, in addition, for certain repairs as may be directed by A and agreed to by S , they would be eligible for the exemption if they are not operated in interstate or intrastate commerce in California during this time period.

Background and Facts

S , LLC ("S") is an aviation maintenance and repair company with facilities for storing and servicing commercial aircraft at the former Air Force Base in , located in County. A has agreed to enter into a maintenance and service contract with S for the storage and servicing of certain out-of-service aircraft and possibly in addition for certain repairs directed by A and agreed to by S for a period that could run as late as 2003. A's tax counsel has informed S however, that if the personal property tax exemption under Revenue and Taxation Code section 220, for aircraft being stored, serviced and possibly repaired does not apply, it will not bring the aircraft into California, since other states are available that do not impose a tax.

Under the proposed contract terms, the aircraft must be regularly serviced every 60 days, in accordance with A's FAA approved maintanence program and updated as necessary in order to meet FAA specifications. Other repairs and modifications may also be needed in order to retain FAA certification through the duration of the contract.

Law and Analysis

As you are aware, the *aircraft being repaired exemption* is set forth in its complete form in Revenue and Taxation Code section 220, which states

> "Any aircraft which in California on the lien date solely for the purpose of being repaired, overhauled, modified or serviced is exempt from personal property taxation. This exemption does not apply to aircraft normally based in California, or operated intrastate or interstate in and into California."

Based on the foregoing, it is clear that the Legislature has provided the exemption in section 220 for out-of-state aircraft that are brought into California "solely for the purpose of being repaired, overhauled, modified or serviced." Since the inception of this exemption, our position has been that the Legislature's purpose was to encourage aircraft servicing, repair and maintenance facilities to locate in California and be in a competitive position to service out-of-state clients. The statutory history indicates that the Legislature perceived this industry as a provider of high-paying jobs and a valuable component of California's industrial base. For this reason, the statute expressly lists aircraft maintenance activities that require the employment of highly skilled labor and technical knowledge. Moreover, the Legislature worded the exemption with a list of technical services sufficiently broad to cover a wide array of circumstances and without any time limitation or disqualification if additional activities are also involved (such as, storage and security). Although the rule of thumb for construing exemptions is to take a strict or narrow view, certainly, if the Legislature had intended some further restrictions on the type of services or the time limit within which those services were to be performed, they easily could have done so. The fact that they omitted such limitations indicates that a broader interpretation is required. Thus, a situation under which aircraft are serviced, and also stored would qualify them for exemption. Similarly, if these aircraft were not out-of-state, but were based in California, or operated intrastate or interstate in and into California during the contract period, they would not be eligible for the exemption.

The aircraft described in your letter do qualify for the exemption in that they are not based or operated in California and will be brought into your facility in California to be stored and to be serviced over a period of up to three years.

Very truly yours,

/s/ Kristine E. Cazadd

Kristine E. Cazadd
Tax Counsel III

KEC:tr
prop/prec/genexempt/01/17kec

cc: Honorable Claude Parrish
Board Member, Third District
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