

Memorandum

To: Mr. David Yeung
Chief
County-Assessed Properties Division (MIC:61)

Date: April 20, 2016

From: Susan Galbraith
Tax Counsel
Tax and Fee Programs Division (MIC:82)

Subject: *Aircraft of Historical Significance Exemption – Newly Constructed Kit Aircraft Assignment No. 15-484*

This is in response to your email request where you state:

I would like to get a legal opinion on the following question: can an aircraft get a historical aircraft exemption solely on the basis that fewer than five are known to exist? [Revenue and Taxation Code] [s]ection¹ 220.5(d) defines historical significance for this section and at first read appears to allow for an "age" *or* "number in existence" only test. Please see below string of emails for background.

A preceding email in the string poses a more specific question:

Does a new, or recently constructed, aircraft – one built from a kit – qualify for exemption, under RTC section 220.5 as an aircraft of historical significance based on the fact that there are fewer than five known to [exist] worldwide? When the [phrase] "...or any aircraft of a type or model of which there are fewer than five in number known to exist worldwide" is read literally, without context recognition, its meaning becomes ambiguous. Does the aircraft still have to be historically significant, and if so, what historical significance derives from a newly constructed aircraft built from a kit, by a member of the general public....²

We note that the taxpayer asserts that "there is only one plane of my type in the world."³ Thus, assuming taxpayer's newly constructed kit aircraft is of a type or model of which there are fewer than five in number known to exist worldwide,⁴ we are asked if such an aircraft would qualify for the exemption on that basis alone. For the reasons stated below, in our view, the exemption for aircraft of historical significance would not apply to a newly constructed kit aircraft based solely on the fact that there are fewer than five known to exist worldwide.

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise specified.

² See email dated December 18, 2015 from Barry Frazier, Tax Specialist II to David Yeung, Chief, County-Assessed Properties Division.

³ See email dated December 17, 2015 from taxpayer to

County Assessor's Local Exemption Specialist.

⁴ Although it is difficult for us to conceive of a one-of-a-kind aircraft built from a kit, for purposes of this Memorandum, we assume the subject aircraft fits within the "fewer than five" criteria of section 220.5, subdivision (d).

Law & Analysis

Subdivision (a) of section 220.5 provides that "[a]ircraft of historical significance shall be exempt from taxation," while subdivision (d) of section 220.5 provides:

For purposes of this section, "aircraft of historical significance" means any aircraft that is an original, restored, or replica of a heavier than air powered aircraft that is 35 years or older *or any aircraft of a type or model of which there are fewer than five in number known to exist worldwide.*

(Italics added.)

It is well established that in interpreting statutes, the fundamental premise of statutory construction is to ascertain and effectuate the Legislature's intent. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) Where the words of the statute are clear, courts may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*Ibid.*) But if the statute is susceptible to more than one reasonable interpretation, a variety of extrinsic aids may be considered including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. (*Jewish Community Centers Development Corporation v. County of Los Angeles* (2016) 243 Cal.App.4th 700, 708.) The meaning of a statute may not be determined from a single word or sentence but must be construed in context and harmonized to the extent possible; literal construction should not prevail if contrary to legislative intent. (*Woodland Park Management, LLC v. City of East Palo Alto Rent Stabilization Board* (2010) 181 Cal.App.4th 915, 923.) A statute's provisions "are to be construed...with a view to effect its objects and to promote justice...[citation]...[and] any specific provision should be construed with reference to the entire statutory scheme of which it is a part...." [citation]. (*Sea World, Inc. v. County of San Diego* (1994) 27 Cal.App.4th 1390, 1403.) "[T]he primary rule of statutory construction...is that the intention of the legislature...will be given effect even though it may not be consistent with the strict letter of the statute." (*Dickey v. Raisin Proration Zone No. 1* (1944) 24 Cal.2d 796, 802.)

We believe that the portion of section 220.5, subdivision (d) in question, "*any aircraft of a type or model of which there are fewer than five in number known to exist worldwide,*" is ambiguous. The word "any" could be taken to mean literally "any" aircraft, or it could be taken to be read within the context of the exemption as "any historically significant aircraft." Therefore, we examine Senate Bill No. 95 (1987-1988 Reg. Sess.) which added section 220.5 to the Revenue and Taxation Code,⁵ as well as its identical predecessor, Senate Bill No. 971 (SB 971), which was enrolled but vetoed by the governor in 1985, in order to ascertain and effectuate the Legislature's intent.⁶

In its report on SB 971, the Assembly Committee on Revenue and Taxation stated its intent for section 220.5 as follows:

This bill exempts from property tax aircraft of historical significance under the following conditions:

⁵ See Stats. 1987, ch. 267, section 1.

⁶ The only difference between subdivision (d) of section 220.5 as enrolled in 1985 and subdivision (d) of section 220.5 as enacted in 1987 is the substitution of "that" for "which" after "aircraft."

- The owner pays a one-time \$35 fee.
- The owner is an individual who does not hold the aircraft primarily for sale.
- The aircraft is not used for commercial purposes or general transportation.
- The aircraft is at least 35 years old *or is an endangered species* (5 or fewer in the world).⁷
- The aircraft is available for display to the public.
- The owner answers all the assessor's questions.⁸

(Italics added.)

Thus, the Legislature intended that if an aircraft was already deemed to be historically significant, it would also be eligible to receive a property tax exemption if, among other things, there were fewer than five of a certain type or model in existence. Since words are to be given their common and ordinary meaning when interpreting statutes, (*Smith v. Fair Employment and Housing Commission* (1996) 12 Cal.4th 1143, 1155), we look to the dictionary definition of "historical." It is defined to mean "of or relating to history", "based on history", or "used in the past";⁹ "history" relates to "events of the past";¹⁰ and "historic" means "famous or important in history", "having great and lasting importance", or "happening or existing in the past."¹¹

Thus, in our view, the Legislature intended that an exempt aircraft would: relate to history or be based on history; relate to events of the past or have been used in the past; be famous or important in history; or have existed in the past; *and also* that the aircraft's *continued* existence be threatened or at risk of extinction. There is no indication that, if the aircraft is not yet 35 years old, the requirement that there be fewer than five in existence worldwide would negate the requirement that the aircraft must be both historical and significant in order to receive the "exemption of aircraft of historical significance." Therefore, a newly constructed kit aircraft that has not been in existence and does not relate to history¹² cannot be at risk of becoming extinct, and thereby would not fit within the scope of the historical aircraft exemption even if fewer than five were known to exist worldwide.

Further support for this interpretation can be found in the Senate Revenue and Taxation Committee Hearing Report for April 1, 1987, which supports a view that, to be exempt, *all* aircraft, even aircraft that are fewer than five in number worldwide, tend to be aircraft that have been *restored or preserved because of their historical importance*:

⁷ "Endangered species" refers to "a species threatened with extinction", or more broadly means "anyone or anything whose continued existence is threatened." *Merriam-Webster Online Dictionary* at <http://www.merriam-webster.com/dictionary/endangered%20species> (as of March 12, 2016).

⁸ Assem. Com. on Revenue and Taxation, Hearing Report for Sen. Bill No. 971 (1985-1986 Reg. Sess.) as amended July 15, 1985, attached as Exhibit 1.

⁹ *Merriam-Webster Online Dictionary* at <http://www.merriam-webster.com/interstitial-ad?next=%2Fdictionary%2Fhistorical> (as of March 12, 2016).

¹⁰ *Merriam-Webster Online Dictionary* at <http://www.merriam-webster.com/dictionary/history> (as of March 12, 2016).

¹¹ *Merriam-Webster Online Dictionary* at <http://www.merriam-webster.com/dictionary/historic> (as of March 12, 2016).

¹² We note that we have opined that even a recently created "replica" of a historical aircraft (e.g. a replica of a World War II aircraft) must be 35 years or older to qualify for the exemption. (Property Tax Annotation 105.0090 (July 6, 2012) and its backup letter. Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

[T]he apparent intent of [SB 95] is to assist those *aircraft owners who restore aircraft as a hobby*, and display the aircraft privately or at air shows...*[¶...¶]* It would be prohibitively expensive for aerospace museums to *collect and preserve examples of all historically-important aircraft*. However, large numbers of enthusiasts are willing to devote vast amounts of time and effort in *preserving and restoring...important historical aircraft*. This bill may make it possible for some of these people to continue to engage in their socially desirable pastime. At least it will to some extent reward them for doing so.¹³

(Italics added.)

Finally, it is noteworthy that although the Department of Finance (DOF) believed in its first analysis of SB 971 that "very few aircraft would fall within the definition of this bill,"¹⁴ it asserted in its second¹⁵ and third¹⁶ analyses of SB 971 that the exemption would be overly broad, resulting in major property tax losses:

This bill would exempt from property taxation all aircraft which is 35 years or older or which there are fewer than five world wide. *Under this definition all World War II aircraft as well as any aircraft built which is unique in its kind, regardless of age [or] "historical significance", would be exempt. As such, the bill would result in a major local property tax loss....*¹⁷

(Italics added.)

However, the San Diego County Assessor later explained that the veto of SB 971 was "partially based on an erroneous analysis provided by the [DOF's] Finance Committee where [the DOF] estimated the tax loss at \$1.3 million...[whereas the assessor]...estimated that the tax loss would be...approximately \$150,000 statewide."¹⁸ Therefore, it appears that when SB 971 was reintroduced as SB 95 on December 15, 1986, the DOF did not oppose it.¹⁹ The DOF appears to have returned to the position stated in its first bill analysis that "very few aircraft would fall within the definition of this bill"²⁰ because the requirement that there be fewer than five in the world did not stand alone from the requirement that the aircraft also be one that is historically significant.

¹³ Sen. Rev. and Tax. Com., Analysis of Sen. Bill No. 95 (1987-1988 Reg. Sess.) as introduced Dec. 15, 1986, attached as Exhibit 2.

¹⁴ Dept. Finance, Analysis of Sen. Bill No. 971 (1985-1986 Reg. Sess.) as amended April 8, 1985, attached as Exhibit 3.

¹⁵ Dept. Finance, Analysis of Sen. Bill No. 971 (1985-1986 Reg. Sess.) as amended April 24, 1985, attached as Exhibit 4.

¹⁶ Dept. Finance, Analysis of Sen. Bill No. 971 (1985-1986 Reg. Sess.) as amended July 15, 1985, attached as Exhibit 5.

¹⁷ Dept. Finance, Analysis of Sen. Bill No. 971 (1985-1986 Reg. Sess.) as amended April 24, 1985, attached as Exhibits 4 and 5, *supra*.

¹⁸ Gregory J. Smith, Assessor, County of San Diego, letter to Governor Deukmejian re: veto of SB 971 (1985-1986 Reg. Sess.), dated October 17, 1985, attached as Exhibit 6.

¹⁹ Willis M. Allen, Jr., President of California Antique Aeroplane Association, Noel Bridge Income Property Co., letter to Mr. Greg Nicholas re: SB 95 (1987-1988 Reg. Sess.), dated February 25, 1987, attached as Exhibit 7.

²⁰ Dept. Finance, Analysis of Sen. Bill No. 971 (1985-1986 Reg. Sess.) as amended April 8, 1985, attached as Exhibit 3, *supra*.

Therefore, we believe that, to expand the definition of aircraft of historical significance to include aircraft that are neither historical nor significant and rather to require only that there be fewer than five known to exist worldwide would be contrary to legislative intent.

SG:yg

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Attachments

cc: Mr. Dean Kinnee (MIC:63)
Mr. Todd Gilman (MIC:70)
Mr. Barry Frazier (MIC:64)
Ms. Terry Leung (MIC:63)