

(916) 445-8900

July 21, 1977

Mr. Alvin E. Anderson
Butte County Assessor
County Administration Building
Oroville, CA 95965

Attention: Mr. Doug G. Drebert
Auditor-Appraiser

Dear Mr. Drebert:

Re: Assessment of an Interstate Employed Aircraft

Your letter of June 30 requests our opinion as to whether your office should retain or vacate an assessment made for the 1977-78 tax year.

The subject property is a non-scheduled aircraft that is employed as an aerial firefighting device. The plane was based at its owner's headquarters in Chico, but pursuant to contract it departed on February 22, 1977, for 137 days of employment in the State of Arkansas. There is a possibility that the plane could remain in Arkansas longer if fire conditions there so warrant. on these facts it is recommended that the assessment be retained.

With respect to taxation of tangible personalty, such as the aircraft in question, the doctrine of *mobilia sequuntur personam* is generally applicable. This means that the state of the owner's domicile retains jurisdiction to tax on a full ad valorem basis so long as the property has not acquired a permanent situs elsewhere. *Central R. Co. of Pa. v. Pennsylvania*, 370 U.S. 607 (1962). Furthermore, the burden is on the taxpayer to prove that a new, taxable situs has been established. *Northwest Airlines v. Minnesota*, 322 U.S. 292 (1944).

If the taxpayer later presents to your office a paid, ad valorem tax receipt from the State of Arkansas (not an aircraft registration fee), then it would be appropriate for the Board of Supervisors to grant a reduction for the pro-rata time that the aircraft was located in Arkansas during the period July 1, 1977, through June 30, 1978 *Ice Capades, Inc. v. County of Los Angeles*, 56 Cal. App. 3d 745 (1976). This could be done upon filing an appropriate claim for refund with your Board see Revenue and Taxation Code, section 5096 as amended January 1, 1977.

Mr. Doug G. Drebert

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Property Tax Rule 205B should not normally be applied when assessing general aircraft employed interstate. It is primarily designed to resolve an inter-county assessment once it has been established that the aircraft is totally employed within the state. If we can be of further assistance as this assessment progresses, please do not hesitate to call.

Very truly yours,

James M. Williams
Tax Counsel

JMW:fp

bc: Mr. Jack F. Eisenlauer
Mr. Bud Florence
Legal Section



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September, 3, 1996

Dear Mr. (redacted):

This is in reply to your letter inquiry of May 21, 1996 regarding the determination of tax situs and assessment of aircraft used for the transportation of corporate officers. You state in your letter that "the aircraft are registered outside California and have hangar locations in other states and Orange County, California. Ground time in Orange County for the aircraft is approximately 50 percent.,, You pose four questions that identify issues pertinent to an analysis of this matter, but it appears from two of your questions that you may misunderstand the application of Property Tax Rule 205(b). By way of responding to each of your questions, set forth below are the general rules for determining tax situs and apportionment of assessment of general aircraft, followed by a discussion of the meaning of "habitually situated" as intended by Rule 205(b). I have also provided an opinion as to whether the court's method of apportionment in GeoMetrics v. County of Santa Clara (t 982) 127 Cal.App.3d 940 applies to general aircraft.

1. How is situs determined and what is the appropriate method (apportionment or non-apportionment) for assessing the aircraft?

The settled -interpretation of tax situs is that property must have "such contacts as confer jurisdiction to tax." Zantop Air Transport, Inc. v. County of San Bernardino (1966) 246 Cal.App.2d 433, 437. Due process requires that the nature of the contacts sufficient to support a state's power to tax must provide the "opportunities, benefits or protection" afforded by the state. Ice Capades, Inc. v. County of Los Angeles (1976) 56 Cal.App.3d 745, 754. Due to the obvious difficulties in determining the situs of movable personal property¹, such as aircraft, the quantum and nature of the contact of property and its owner with a state necessary to establish tax situs is a factual determination. Ice Capades, Inc., supra., at 753.

¹ Board of Equalization Property Tax Rule 205(a) defines "movable property" as "all property which is intended to be, and is, moved from time to time from one location to another."

In general, relevant factors to be considered should include the aircraft's length of time in the jurisdiction the owner's intent in bringing the aircraft into the jurisdiction, and the owner's contact with the jurisdiction. These factors were determinative in Ice Capades, Inc., *supra*, at 753. In your case, on the facts presented, the aircraft have a "substantial nexus with California based on the 50 percent ground time in Orange County. The nature of the contact attributable to the length of time alone would seem to indicate that the aircraft have at least partial tax situs in California.

To respond to the second part of your question, apportionment of assessment depends upon domicile and situs. For aircraft maintained and operated solely within California, they have an established tax situs in California, and the appropriate California county has assessment jurisdiction without apportionment.² Of course, aircraft having mere transitory contact with California do not have either an established domicile or situs in this state and, hence, are not subject to personal property tax here.

For aircraft that are domiciled in California, have an established tax situs in California and have tax situs in another state or states, the appropriate California county or counties may assess portions of values reflecting the periods that the aircraft are not present in other states where they have established tax situs. Where an aircraft is domiciled in another state and has tax situs in that state and in California, value should be apportioned to California for *only* the time spent in California, Ice Capades, Inc., *supra* at 755. Finally, if an aircraft has domicile and tax situs in California but operates for some part of the year in a foreign country, then the value is apportioned to California for only the time spent in California. GeoMetrics v. County of Santa Clara (1982) 127 Cal.App.3d 940.

With regard to your case, if the aircraft are domiciled and have tax situs in California, apportionment of the assessment depends upon whether the aircraft are potentially subject to taxation in another state or states. Once tax situs in another state has been shown, then the aircraft are exempt from taxation in California for the portion of time that they are potentially subject to taxation in the other state. If the aircraft have domicile in another state and partial tax situs in California, then they are assessable by the appropriate California county for the portion of the time that they are present in California.

2. Under Property Tax Rule 205(b), how is "habitually situated" determined with reference to the situs in California for general aircraft?

Article XIII, Section 14 of the California Constitution provides that "[a]ll property taxed by local government shall be assessed in the county, city, and district in which it is situated." With respect to general aircraft, the more specific provisions of subdivision (b) of Property Tax Rule 205 state that:

² Property Tax Rule 205(b), *infra*.

Aircraft other than those subject to Revenue and Taxation Code sections 1150 to 1155 have situs for taxation purposes at the airport in which they are habitually situated when not in flight. An aircraft that spends a substantial amount of ground time at each of two or more airports has its tax situs at the airport where it spends the greatest amount of ground time.³

Rule 205(b) presupposes that those aircraft to which the rule applies have an established tax situs in California. The term "habitually situated" denotes the local county tax situs among the counties within California, the airport at which the aircraft is usually present when not in flight. For purposes limited to the application of Rule 205, the second sentence of section (b) provides for tax situs for aircraft "habitually situated" at more than one California airport as "the airport where it spends the greatest amount of ground time..". Thus, once California tax situs has been established, the aircraft is "habitually situated" at the airport of the local jurisdiction where the aircraft spends its ground time. If the aircraft spends a substantial amount of time at multiple airports, it is "habitually situated" at the airport where it spends the most ground time. With regard to your specific situation, assuming that the aircraft have California tax situs, they are habitually situated in Orange County.

3. Is there apportionment between California and non-California situs for general aircraft? As explained in the answer to question number 1. there is apportionment for general aircraft.

4. If the aircraft is not habitually situated in California, does apportionment apply? Furthermore, is the aircraft subject to assessment?

As explained in the response to question number 2., tax situs in California is a necessary precondition to the determination of whether an aircraft is "habitually situated" in California. Apportionment applies only if an aircraft has partial tax situs in California. If the aircraft is not habitually situated in California, no tax situs in California exists and, thus, there is no issue of apportionment, at least for purposes of California taxation. Of course, if an aircraft does not have tax situs in California, then it is not subject to assessment.

Your last question concerns the recommendation for apportionment of assessments of general aircraft given in the Assessor's Handbook AH-201 Tax Situs of Property, which is based on the holding of GeoMetrics, supra. Because, as you state, the aircraft in GeoMetrics appear to be certificated aircraft, you ask whether the rules established in that case apply to general aircraft as well. Pursuant to Revenue and Taxation Code section 1150, "certificated aircraft" are those aircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in subdivisions (3), (5), (10), and (19) of Section 101 of Title I of the "Federal Aviation Act of 1958" (P.L. 85-726; 72 Stat. 731). while there is in force a certificate or permit issued by the Civil Aeronautics Board of the United States, or its successor, or a certificate or permit issued by the California Public Utilities Commission, or its successor, authorizing such air carrier to engage in such transportation.

³ Revenue and Taxation code sections 1150 to 1155 concern "certificated aircraft". The type of aircraft that is subject to this inquiry are general aircraft and, hence, Rule 205(b) is applicable.

As I read the case, the aircraft in GeoMetrics were not operated by an air carrier engaged in air transportation but, rather, were operated by a company that performed airborne geophysical surveys in the United States and abroad. Because apportionment of general, rather than certificated; aircraft were in issue in GeoMetrics, the "rules" from that case apply only to general aircraft.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the Orange County Assessor or the assessor of any county-. You may wish to consult the appropriate assessor(s) in order to confirm that the described aircraft will be assessed in a manner consistent with the conclusions stated above.

Our intention is to provide helpful and courteous responses to inquiries such as your. Suggestions that help us to accomplish this objective are appreciated.

Very truly yours,

Louis A. Ambrose
Tax Counsel

LA:ba

cc: Honorable Bradley Jacobs, Orange County Assessor
Mr. James Speed, MIC:63
Mr. Richard Johnson, MIC:64
Ms. Jennifer Willis, MIC:70