

# AIRCRAFT EXEMPTIONS

## AIRCRAFT OF HISTORICAL SIGNIFICANCE EXEMPTION

Aircraft are taxable and are subject to annual appraisal. State law requires that aircraft be assessed on the January 1 lien date annually at the tax situs where they are regularly or habitually situated in California, unless an exemption is applicable.

Aircraft of historical significance may qualify for exemption from property taxation pursuant to Revenue and Taxation Code<sup>1</sup> section 220.5. An aircraft and its use must meet the qualifications for the exemption each year, and the owner of the aircraft must qualify and file for the exemption each year.

*Aircraft of historical significance* is defined in subdivision (d) of section 220.5 as:

...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.

For purposes of the "fewer than five" requirement, the airplane's original make and model is the determining factor, regardless of the amount of modifications the aircraft may have undergone.

The Aircraft of Historical Significance Exemption applies only if all of the following conditions are satisfied:

1. The assessee is an individual owner who does not hold the aircraft primarily for purposes of sale. An individual owner is a live person, not a legal entity such as a corporation or partnership; however if more than one individual owns the aircraft, the exemption may still be granted. Thus, the claimant may be two spouses or several co-owners, as long as they are shown as the "owner";
2. The assessee does not use the aircraft for commercial purposes or general transportation; and
3. The aircraft is available for display to the public at least 12 days during the 12-month period immediately preceding the lien date for the year for which the exemption is claimed.

One of the primary requirements to qualify for the exemption is that the airplane must be available for display to the public at least 12 days annually. *Available for display to the public* means actual display or documented willingness to display at:

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<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise specified.

- An organized air show;
- A museum; or
- A specially designated area set aside for historical aircraft open to the public.

To qualify as available for display to the public under any other situation not described above, an individual must document the following:

- The aircraft is displayed in such a manner that the general public may reasonably be assumed to be aware that public viewing is clearly invited; and
- There are reasonable accommodations to allow public viewing of the aircraft.

To qualify as available for display under any situation also means that:

- There must be a reasonable effort to make the general public aware of the display; and
- There must be reasonable viewing hours.

Consequently, making the aircraft available by appointment only is not a clear invitation for viewing issued to the general public. Further, an owner's home site will lack reasonable accommodations for public viewing in most instances. The airplane must be displayed in a place where deliberate public viewing can be accommodated. Therefore, an aircraft stored on the owner's private property is not considered on "public display," even if the storage site is visible from a public highway. Additionally, there is no requirement that the aircraft display site be in California to qualify for this exemption.<sup>2</sup>

The required number of days that the airplane must have been available for display to the public must be at least 12 days during the 12-month period that immediately preceded the lien date for the year that the exemption is claimed. If the aircraft is first made available for public display less than 12 days prior to the lien date (for example, December 22), the exemption may be granted if the claimant certifies in writing that the aircraft will be made available for public display at least 12 days during the 12-month period commencing with the first day the property is made available for public display.

To meet the display requirement, an aircraft must be displayed, or available for display, for 12 periods, with each period being 4 or more hours during one 24-hour period. If the aircraft is airworthy, at least 6 of the 12 displays must be:

- Flown, taxied, or otherwise moved to a location other than the normal storage location for display to an organized group of persons, for an announced display to the general public, or for permanent display at a museum.

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<sup>2</sup> See Letter To Assessors 2002/090 [[www.boe.ca.gov/proptaxes/pdf/lta02090.pdf](http://www.boe.ca.gov/proptaxes/pdf/lta02090.pdf)].

If the aircraft is not airworthy and/or the aircraft is being restored, the 12 displays may be any combination of either the requirements in the above paragraph or:

Displayed in the normal storage location to an organized group of persons, as part of an announced display to the general public, or during posted day time viewing periods of four or more hours with public accessibility.

As used in section 220.5, available for public display includes instances where an aircraft is formally scheduled for display at a qualifying site, and then the display is subsequently cancelled (for example, because of rain). That cancelled date would count as a day available for display for purposes of qualifying for the exemption.

The Aircraft of Historical Significance Exemption does not allow the aircraft to be used for commercial purposes or general transportation. *Commercial purposes* means the conveyance of passengers or goods for any business reason, or use of the aircraft for any revenue-producing activity. If an owner is depreciating an aircraft as business property, or writing off the expenses relating to the aircraft as business expenses, the assessor should consider that factual documentation that the aircraft is being used for commercial purposes. *General transportation* means flights of an aircraft from one place to another for the primary purpose of transporting passengers or goods from one location to another. To constitute general transportation, there must be flight from one place to another, rather than flights that originate and end in the same place with no intervening stop. However, flights to and from historical aircraft shows or displays with stops or overnight layovers do not constitute general transportation. Recreational flying, maintenance-related flying, and flights necessary to maintain the owner's pilot's certificate would not constitute general transportation, unless the flights are primarily for the purpose of transporting goods or persons to another location.

Board-prescribed form *Claim for Exemption from Property Taxes of Aircraft of Historical Significance*<sup>3</sup> must be used when claiming this exemption. A claimant must provide all information required and answer all questions contained in the affidavit. The owner of the aircraft must qualify and file for the exemption each year.

The claimant must sign the affidavit under penalty of perjury<sup>4</sup> and attach a certificate of attendance from the event coordinators of the events at which the aircraft was displayed. The Assessor may require additional information or proof of answers provided in the affidavit before allowing the exemption. If, at a later date, it is determined that the owner or aircraft did not meet the exemption qualifications, an escape assessment should be issued, with any applicable interest and penalty added to the assessment.

Unlike other exemptions, the Aircraft of Historical Significance Exemption requires a fee of \$35 to be collected by the Assessor with the initial affidavit for the exemption.<sup>5</sup> The \$35 filing fee is

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<sup>3</sup> Form BOE-260-B.

<sup>4</sup> Section 220.5, subdivision (c).

<sup>5</sup> Section 220.5, subdivision (e).

payable only once per aircraft per county and is not required with each annual affidavit filed thereafter in the same county.

An aircraft that has been receiving the exemption in one county and then changes its situs to another county must pay the \$35 fee again to the Assessor in the new county when the initial affidavit is filed. However, if an owner removes an aircraft from the taxing jurisdiction of a county and then returns the aircraft at a subsequent lien date to the same county, the fee is not required for a subsequent affidavit filed for the same aircraft.

A separate affidavit must be filed for each aircraft when an individual owns multiple potentially qualifying aircraft. The fee is charged for each initial affidavit.

A claim for the Aircraft of Historical Significance Exemption must be filed annually with the Assessor by 5:00 p.m. on February 15, for the preceding lien date, to receive 100 percent of the exemption.

If a person claiming the Aircraft of Historical Significance Exemption fails to timely file the claim, but files on or before the following August 1, the assessment will be reduced by an amount equal to 80 percent of the reduction that would have been allowed had the affidavit been timely filed.<sup>6</sup> No exemption is allowed for any claims filed after August 1.

***Example 1***

**Historical Aircraft Exemption Claim Filing**

Assessed Value of Aircraft	\$200,000
Property Tax Rate	1%
Property Tax	\$2,000

**Timely Filed on or Before February 15**

Exemption Allowed	\$2,000 (\$200,000 x .010)
Property Tax Payable	\$0

**Filed Late on or Before August 1**

Exemption Allowed	\$1,600 (\$2,000 x .80)
Property Tax Payable	\$400

**Filed Late After August 1**

Exemption Allowed	\$0
Property Tax Payable	\$2,000

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<sup>6</sup> Section 276.5.

## AIRCRAFT FOR DISPLAY EXEMPTION

An aircraft that is made available for display in an aerospace museum may qualify for exemption from property taxation pursuant to section 217.1. The aircraft must meet the qualifications for the exemption each year, and the claimant must file for the exemption each year. Unlike most exemptions, the Aircraft for Display Exemption is not based on its status as of lien date, but based on its display status during the 12-month period immediately preceding the lien date.

The Aircraft for Display Exemption applies only if the aircraft is available for display in either a publicly owned aerospace museum or an aerospace museum that is regularly open to the public which is operated by a nonprofit organization that qualifies for exemption. Such personal property must meet at least one of following criteria:

1. The aircraft has been restored or maintained, whether currently certified or not for flight purposes; or
2. The aircraft is donated in perpetuity to the aerospace museum.

This exemption does not apply to any aircraft loaned to an aerospace museum by any person who holds the aircraft primarily for purposes of sale.

One of the primary requirements to qualify for the exemption is that the aircraft must have been available for public display in an aerospace museum for 90 days or more during the 12-month period that immediately preceded the lien date for the year that the exemption is claimed. The aerospace museum in which the aircraft is displayed must be one that is either publicly owned or one that is operated by a nonprofit organization that is regularly open to the public which qualifies for exemption.

*Regularly open to the public* means that the aerospace museum was open to the public for 20 or more hours per week for 35 or more weeks during the 12-month period that immediately preceded the lien date for the year for which the exemption is claimed. If the museum has been open for less than 35 weeks or for less than 20 hours per week during the required time period, the exemption may still be granted if the director or other officer of the museum certifies in writing that the museum will be open for not less than 20 hours per week for not less than 35 weeks during the 12-month period beginning with the date the aerospace museum was first opened.

Information regarding the number of weeks or hours that the museum was open during the 12-month period preceding the lien date for which the exemption is sought is not verified on the affidavit. However, the Assessor may request such verification.

### ***Example 2***

An aerospace museum, operated by a qualified nonprofit organization, was first opened on September 1, 2011. It is currently open three days of the week, Friday

through Sunday, from 10:00 a.m. to 4:00 p.m. A claimant files a completed affidavit on January 10, 2012 for his restored F-14 airplane that has been continuously on display at the museum since its opening.

The Assessor reviews the certification from the museum. As of lien date 2012, the aircraft met the 90-day minimum display requirement in 2011 prior to the January 1, 2012 lien date; however, the museum was not open for the required 35-week minimum time period, nor was it open the required 20 hours per week. The claimant obtained a written certification from the director of the aerospace museum that the museum will be open for at least 19 weeks prior to August 31, 2012 (35 weeks minimum minus 16 weeks opened in 2011) and attached the certification to the claim form.

The Aircraft for Display Exemption should be approved by the Assessor as meeting the provisions of section 217.1.

If an aircraft was first made available for public display less than 90 days prior to the lien date, the exemption may still be granted if the claimant certifies in writing that the aircraft will be made available for public display for 90 days or more during the 12-month period commencing with the first day the property is made available for public display.

In the instance of prospective treatment in the initial qualifying year, the Assessor can request additional information at a later date to verify compliance. If, however, the claimant certified in writing that the aircraft *would be* made available and the aerospace museum *would be* open for the required timeframe, but later the Assessor determines that the aircraft was not so made available or that the museum was not so opened, the exemption must be cancelled, and an escape assessment made as provided by section 531.1.

In counting the number of days an aircraft is available for display, it is possible for the same display dates to be used for more than one year, but only during the initial year an aircraft qualifies for the exemption.

### ***Example 3***

An aircraft is first made available for display on November 1, 2011 and is displayed, or available for display, a total of 40 days prior to the January 1, 2012 lien date. The owner files a claim in January 2012 for the 2011-2012 assessment year, and since the aircraft was not displayed for 90 days or more prior to the January 1, 2012 lien date, the claimant certifies that the aircraft will be available for display an additional 50 days prior to November 1, 2012. The display dates occurring after January 1, 2012 (January 1 – October 31, 2012) that are used for the 2012 lien date could be used again for the 2013 lien date. Such prospective consideration of days is not available for 2014 and following years, as the time period will no longer qualify as "first made available for public display."

The Board-prescribed claim form *Certificate and Affidavit for Exemption of Certain Aircraft*<sup>7</sup> must be used. A claimant must provide all information required and answer all questions contained in the claim form on an annual basis. The Assessor may also require other proof of the facts stated in the affidavit before allowing the exemption. The bottom part of the claim form is to be completed by the director or other officer of the aerospace museum in which the aircraft is displayed. This serves as the certificate to indicate that the aircraft was available for public display for the required time period. Both the claimant and museum director or officer are to sign the affidavit under penalty of perjury.<sup>8</sup>

The claimant may complete the affidavit for exemption for multiple aircraft in the same aerospace museum, listing the following information for each one on an attachment:

- The description of the aircraft (make, model, year, FAA or tail number); and
- The nature of the aircraft for which the exemption is claimed (restored or maintained aircraft and/or aircraft donated in perpetuity).

Similarly, the director or officer of the aerospace museum may list the dates multiple aircraft were on display on an attachment, but the museum personnel must sign the *Certificate and Affidavit for Exemption of Certain Aircraft* form, as well as on each attached information sheet.

A claim for the aircraft exemption must be filed annually with the Assessor between the lien date and 5:00 p.m. on February 15 for the preceding January 1 lien date. Since there is no late filing provision for the Aircraft for Display Exemption, the exemption is waived for the current year if the claimant fails to file by February 15.

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<sup>7</sup> Form BOE-260-A.

<sup>8</sup> Section 217.1, subdivision (b).