

TAX MATTERS

A newsletter dedicated to informing California Aircraft and Vessel owners about taxes

Prepared and distributed by Aero & Marine Tax Professionals

PROPERTY TAX ALERT

Sales tax is a proper component of value when the assessor values personal property, including private aircraft. For example, if an owner of a 2004 Gulfstream G- IV, model G400, say, when valued for 1/1/2005 using the Bluebook Price Digest or Vref, the value is listed at \$31,000,000. To this the assessor in Los Angeles County would add 8.25% sales tax, or \$2,557,500 to arrive at an assessed value of \$33,557,500 (this is simplistic as other adjustments might be made before an assessed value is determined).

The resultant tax would be \$25,575 just for the sales tax portion that is added to the aircraft value. This additional tax is paid each and every year that the person owns the aircraft. For most private aircraft, this additive (component) to the aircraft's value has been said to be proper, however, if the aircraft is in use as a common carrier and is certified to conduct such operations under a Part 135 certificate issued by FAA and has been exempted from paying sales tax because the aircraft has qualified under the sales and use tax as having been purchased or leased for the purpose of use as a common carrier of persons or property (Rev. and Tax Code 6366 and 6366.1 and Regulation 1593) sales tax is not added, should not be added, to the retail value or cost of the aircraft.

The exemption from sales or use tax must have come about from an examination or audit of the books and records of the owner by the State Board of Equalization and had been granted because the aircraft was used at least one-half of the first twelve consecutive months after the "first operational use" as a common carrier and the owner or lessor's gross receipts from operations exceed 20 percent of the purchase price or \$50,000, whichever is less.

OPINION BY STATE BOARD LEGAL STAFF

Yours truly, David A. Lucero, requested a legal opinion from the State Board of Equalization (SBE) because some counties were not exempting the sales tax even when the aircraft owners or lessor had met the requirements listed above. I pointed out that and assessors' handbook 577, Appraisal of General Aircraft, states that sales tax is a proper component of value when price is the basis of value and should be included in the estimate of market value, but the discussion goes on to state, "There are exceptions to the general rule. Equipment rented to federal instrumentalities and aircraft used by common carriers (neither of which are subject to sales tax), for example, are valued without sales tax as an element of value."

After researching the matter, SBE attorneys agreed with me that aircraft that are in use as common carriers and had been exempted from sales tax because of their use as common carriers should not have the sales tax component added to the retail value of the aircraft.

EXEMPTION FROM SALES TAX FOR OTHER REASONS

How does SBE recommend that aircraft be valued that are being used as "on demand" air taxis (common carrier operations) under a Part 135 Certificate, but the exemption from sales tax was not given as a result of qualifying under Regulation 1593.

They have not formally stated that the exemption from sales tax qualifies under any other regulation, because the question was not asked, but what they said, in part, was: "...If your client's airplanes are used in a manner that qualifies them as common carriers under the standards discussed above, they should be valued without sales or use tax as an element of value."

A reading of this and of Regulation 1620, INTERSTATE AND FOREIGN COMMERCE that if the aircraft met the requirements to be exempted under this regulation and the aircraft had been certified for use as a common carrier by DOT/FAA, then the aircraft should be valued without the sales or use tax as a component of value.

WHAT TO DO

If you know that the aircraft will be used in charter service exclusively or partly in California, you should get the sales tax or use tax exclusion using whatever your sales and use tax expert recommends. Get SBE's Consumer Use Tax Section to review the aircraft's use and revenue during the trial period recommended under the different code sections and regulations that pertain to your aircraft. Get them to issue ratification stating the aircraft had been granted an exemption following their review. Of course, the aircraft must have been certified by DOT/FAA for common carrier usage.

TAX SAVINGS

You may have gotten the exemption from sales tax, which ranges from 7.25% to 8.75% depending on which county your aircraft has situs, (where you normally hanger it), so the one-time sales or use tax savings is much greater than the basic 1% prevailing property tax rates on the aircraft. But the property tax is ongoing and the component for property taxes, unless exempted, is added to the aircraft's value each year. In my example, of the G IV earlier, after ten years, the owner or lessor would have paid an amount equal to, or greater than the sales tax savings on the aircraft. And by getting the exemption and otherwise qualifying as a common carrier, you would have property tax savings every year.

If further clarification is needed, or you have met the requirements for the exemption from sales tax but are being assessed with that cost added, please contact me at the number of e-mail address below.

David A. Lucero