

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-2641

October 31, 1975

Mr. B--- A---
--- --- & Co
XXXX N. --- Street
--- ---, California XXXXX

Dear Mr. A---:

Enclosed is a copy of the letter dated May 26, 1969, requested by you on October 29, 1975.

As we advised you, we have recently formulated some general guidelines to be used in determining whether an aircraft is being used in common carrier operations. These guidelines were formulated with respect to operations conducted by air taxi operators.

The guidelines are as follows:

We have concluded that an air taxi operator is operating under the laws of the United States even in those situations where he is performing sightseeing operations, banner towing, aerial photography, and those other enumerated activities spelled out in ~~Section 131(b)~~ §135.1(b) of 14 CFR. We have not concluded that banner towing and aerial photography qualify as common carriage of persons or property. We have concluded that the operator in such instances is operating under the laws of the United States when performing such work.

The question remains as to whether the particular person is operating as a common carrier as distinguished from a contract carrier. A common carrier is a person who engages in the business of transporting persons or property for hire or compensation and who offers his services indiscriminately to the public or to some portion of the public. It is our opinion that as a general rule we should look to the person's advertising, be it phone book, brochures, or other items, to determine whether he is holding himself out to carry people indiscriminately. After this is established, it is our opinion that if it is proven that he has carried the public in several flights and has also had specific contracts with specific persons to haul them for certain periods that these periods under the specific contract should also be considered as common carriage. We have grave doubts, however, as to whether common carriage occurs in the situation where the carrier buys a

particular plane for the specific purpose of entering into a long-term carriage contract with a particular individual or corporation.

In the case which we discussed, you advised us that your client will purchase a Cessna aircraft for the purpose of leasing it to a corporation which will use it in proprietary hauling. This is the question left open by the guidelines rephrased above.

Very truly yours,

Gary J. Jugum
Tax Counsel

J:alicetilton
Enclosure