

**STATE BOARD OF EQUALIZATION**

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Executive Director

November 22, 1996

Ms. S--- J. K---  
A--- M--- Corporation  
XXXX South ---  
---, CO XXXXX

**Re: A--- M--- Corporation**

Dear Ms. K---:

This is in response to your letter dated October 3, 1996, in which you ask whether your use of a helicopter for medical transport is exempt from tax. You state:

“A--- M--- Corporation currently leases and operates and MBB BK-117 helicopter (- - XXX--, Serial No. XXXX) for air medical transport under a contract with Stanford University Hospital in Stanford, CA. A--- M--- Corporation has paid California State and Santa Clara County sales taxes on the fair rental value of the aircraft to [D]--- F--- S---, Inc., the owner of the aircraft.

“We have recently researched our sales and use tax position in California and believe that we qualify for an exemption from these taxes as a common carrier. Section 6366[.1] of the California Revenue and Taxation Code states that persons authorized as ‘common carriers of persons or property under authority of the laws of this state, of the United States or any foreign government’ are exempted from taxes imposed on the gross receipts from the sale or use of the aircraft. Federal Aviation Regulation 91.1 reads, ‘Common carriage is the holding out of a transportation service to the general public for compensation; “holding out” can be accomplished by any means which communicates to the public that a transportation service is indiscriminately available to the segment of the public it is designed to attract.’ A--- M---’ services are available to and designed to attract those members of the public requiring medical transport in the Stanford area. The Air Carrier Certificate issued to A--- M--- by the Federal Aviation Administration under the Federal Aviation Act of 1958, as amended, states that A--- M--- is

‘authorized to operate as an air carrier and conduct common carriage operations in accordance with said Act.’ The definition of common carrier in Regulation 1593(b) of the California Revenue and Taxation Code states that receipts from common carrier operations must exceed 10% of the lessor’s cost of the aircraft. In 1995 total revenue earned from the operation of the above referenced helicopter totaled \$1.5 million compared to an equipment cost of \$4.1 million.”

For the purposes of this opinion we assume that your contract with Stanford University Hospital (Stanford) requires that you provide air transport services to patients of that hospital only and Stanford pays you for those services. We also assume that the hospital has and exercises control over when and where you will transport their patients.

Use tax is the relevant tax in this case. Use tax, absent a statutory exemption, is imposed in California on the lessor’s use of the aircraft in California. (Rev. & Tax. Code § 6201.) The helicopter is mobile transportation equipment (MTE). A lessor of MTE may elect to pay its use tax liability measured by the fair rental value of the MTE. (Sales and Use Tax Reg. 1661.) When a lessor makes such an election, it may collect reimbursement from the lessee for its tax liability. This is what your lessor has presumably done.

There is a statutory exemption from use tax for the use of aircraft leased to persons who use the aircraft as common carriers of persons or property under authority of the laws of this state, the United States, or any foreign government. (Rev. & Tax. Code § 6366.1(a).) “The term ‘common carrier’ means any person who engages in the business of transporting persons or property for hire for compensation and who offers his services indiscriminately to the public or some portion of the public.” (Sales and Use Tax Reg. 1593(a).)

When an aircraft is dedicated exclusively for use for a single client, it is not available “to the public” for carriage of persons or property and is not used as a common carrier of persons or property as required by Regulation 1593(a)(1). (See, e.g., Bus. Taxes L. Guide Annot. 105.0063, 1/13/81.)

The fact you are authorized to operate as a common carrier under the Federal Aviation Administration Regulations does not mean your operations, in this case, are that of a common carrier. You provide a charter service to Stanford rather than common carrier services to its patients since you provide your service only to the hospital. Thus, you are not offering your services to the public or a portion of the public as required for the exemption contained in section 6366.1. Therefore, your use of the aircraft does not qualify for the exemption from tax provided for aircraft leased and used in common carriage.

If the assumptions we made are not correct, then the advice given may likewise be incorrect. If you have any further questions in regard to the matters contained herein please do not hesitate to write again; if you do so, please provide us with a copy of your contract with Stanford.

Ms. S--- J. K---

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November 22, 1996  
105.0125

Yours very truly,

Anthony I. Picciano  
Tax Counsel

AIP:cl

cc: Out-of-State District Administrator