

M e m o r a n d u m**105.0155**

To: Audit Review and Refund Unit
(M. Kitchen)

November 21, 1989

From: E. L. Sorensen, Jr.

Subject: G--- P---
SR -- XX-XXXXXX

We understand the taxpayer, G--- P---(G---), purchased an aircraft in 1984 for the purpose of leasing it to private individuals. G--- gave its vendor a timely resale certificate and reported tax based upon fair rental value from the time of purchase in 1984 through June 1987. Between July 1987 and June 1989, G--- leased the aircraft to a common carrier and continued to report use tax based on fair rental value.

G--- now seeks a refund for tax reported during the period the aircraft was leased to the common carrier. We indicated our opinion verbally that a refund was not due under these circumstances. You asked that we confirm our opinion in writing.

This is to confirm our advice. Revenue and Taxation code Section 6366.1 provides for an exemption from sales and use taxes of certain leases of aircraft to common carriers. Regulation 1593, which interprets and clarifies Section 6366.1 and its companion Section 6366, provides for a twelve month principal use test (see Reg. 1593(b)). In order for the common carrier exemption to apply, the aircraft must be used in common carriage for more than half of the twelve month test period. The test period commences with the first "operational use" of the aircraft after its purchase. "Operational use" is defined in the regulation to include "... the actual time during which the aircraft is operated ..." (Reg. 1593(b)(1)(A)). Here, the aircraft was admittedly operated in non common carriage service for the first three years after G&P purchased it and, accordingly, there is no basis for the Section 6366.1 exemption or claim for refund based thereon.

We note that the taxpayer elected to report its tax liability based upon fair rental value. Its reporting in this manner throughout the lease period under discussion (1984 – 1989), was proper and was required by law (See Rev. & Tax. Code §§ 6094(d), 6244(d); Reg. 1661(e)(2)).

ELS:jb