

**STATE BOARD OF EQUALIZATION**

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March 10, 1986

Mr. T--- M. J---  
P. O. Box XXX  
---, WA XXXXX

Certificate of public convenience and necessity  
Local and transit district use taxes – aircraft  
common carriers

Dear Mr. J---:

In your January 10, 1986 letter to me, you write:

I am seeking a determination into the matter of local sales and use tax exemptions available to common air carriers either with or without a "Certificate of Public Convenience & Necessity." As we noted and discussed during our telephone conversation, there is a significant difference between Retail Sales Tax statutes and Use Tax statutes whereby the latter solely contains the apparent qualification requiring common air carriers to have a Certificate of Public Convenience & Necessity. The Certificate was formerly issued by the Civil Aeronautics Board or the California Public Utility Commission.

As your research has likely confirmed, the now defunct Civil Aeronautics Board as part of 1978 airline deregulation ceased all requirement that air carriers possess such a Certificate. At or about that same time, the California Public Utility Commission determined likewise. Currently there is no legal requirement to hold such a certificate nor is there any federal or state agency from which such a Certificate could be obtained.

Applicable Use Tax statutes within California's Uniform Local Sales and Use Tax Law referring to a Certificate of Public Convenience & Necessity are: Section 7202(9)H, Section 7202.6(8), and Section 7203(5) as operative at January 1, 1986. Similarly, the Transaction and Use Tax Law contains that identical language at Section 7262(5). Pending your consideration and review of this matter I would appreciate your opinion as to how a common carrier may regard the Use Tax statutes above and the apparently broader Retail Sales Tax statutes

which are absent such language. Does not the demise of the Certificate invalidate the proviso within the Use Tax sections referenced?

Opinion

You are correct that the phrase “under a certificate of public convenience and necessity issued pursuant to the laws of this state [or], the United States,” which appears in Revenue and Taxation Code Section 7202 (a)(9)(J) and Section 7202.6(a)(10), (both part of the Bradley-Burns Uniform Local Sales and Use Tax Law), and Section 7262(a)(6), (part of the Transactions and Use Tax Law), no longer applies as a limitation on the use tax exemptions provided by those sections. Since both the California Public Utilities Commission and the United States no longer issued these certificates, this language has become obsolete. Therefore, sales to aircraft common carriers qualify for the exemptions provided by those sections if the remaining conditions of the exemptions are met.

Please feel free to contact me if you have any further questions or comments about this letter.

Very truly yours,

John Abbott  
Tax Counsel

JA:hb