

Common Carrier Tax Exemption Discouraged

It is natural to refer to the "common carrier" sales and use tax exemption as a "Part 135" exemption, but to do so is inaccurate. California Sales and Use Tax Regulations do not specifically provide an exemption for aircraft used in "Part 135" operations. All common carriers are "Part 135" operators, but not all "Part 135" operators are common carriers. In order to be a common carrier you must hold yourself out to the "public".

Throughout our 26-year history, Associated Sales Tax Consultants, Inc. (ASTC) has received thousands of telephone calls from potential clients seeking guidance on how to legally avoid sales/use tax on their aircraft purchase. These callers are informed of the requirements pursuant to the common carrier rules, as outlined in the Sales and Use Tax Regulation, §1593. They are further advised that the common carrier requirements are extremely labor intensive and burdensome when compared to other allowable tax exemptions. It has been our firm's practice to advise those who wish to file a common carrier exemption that there are less costly and less time consuming exemptions available in the law. We explain that with a few minor changes they may proceed with their plans to operate the aircraft as a Part 135 carrier, while advising them to consider claiming the more straightforward "Commercial Interstate or Foreign Commerce (CIFIC) exemption", pursuant to Sales and Use Tax Regulation, §1620.

We believe it is in the client's best interest to claim the CIFIC exemption for several reasons. First, the "test period" for this exemption is six (6) months instead of twelve (12) months. It is important to recognize that many representatives will gladly charge you the higher fees associated with the longer twelve (12) month test period even though you may qualify for the shorter (6) six month CIFIC exemption.

Secondly, there is considerably less documentation required for the CIFIC exemption to be considered as compared to the common carrier exemption. The common carrier exemption requires taxpayers to provide documentation qualifying the aircraft, the pilots and the crew; as well as, providing flight plans, load manifests, charter invoices, weather briefings and other relevant documentation. There are no such documentation requirements to qualify for the CIFIC exemption. The Board of Equalization also takes into consideration the specific purpose of each leg of the charter flight to determine whether the flight has met the sales and use tax requirements, not the FAA requirements.

Finally, the aircraft owner can expect to see a cost savings associated with the CIFIC exemption of less than one half the cost of the common carrier exemption. Thus, the decision to claim the CIFIC exemption could result in a win-win situation for the consumer.

Nevertheless, in the world of probability, circumstances will always dictate which of the two exemptions the aircraft owner could qualify. For example, if delivery has occurred and title and possession is transferred within the State of California, the aircraft owner's only option would be to claim a common carrier exemption. However, if title and delivery is transferred to the buyer outside of California and a first functional use of the aircraft occurred outside of California prior to its first entry into California, then the consumer could qualify for the (6) six month CIFIC exemption. (Note: "first functional use" has specific meaning in law and interpretation)

Most common carriers are chartering their large, long range, aircraft to consumers who use the aircraft to travel from within California to points outside of California. These types of flights are considered commercial interstate commerce, pursuant to Regulation §1620. These flights generally make up a significant majority of total flight hours flown by the common carrier.

Sales and Use Tax Regulation §1620 states in part:

"(4) Purchase for Use in this State - vehicles and aircraft. A vehicle or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle or aircraft is in California. When the vehicle or aircraft is first functionally used outside of California, the vehicle or aircraft will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 12 months after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless (B) if a vehicle, one-half or more of the miles traveled by the vehicle during the six-month period immediately following its entry into this state are commercial miles traveled in interstate commerce, or if an aircraft, one-half or more of the flight time traveled by the aircraft during the six-month period immediately following its entry into the state is commercial flight time traveled in interstate commerce. Such use will be accepted as proof of an intent that the property was not purchased for use in California."

Please note, we are suggesting the aircraft owner use the CIFIC exemption, when available, for sales tax purposes only. We also recommend the aircraft simultaneously continue, if desired, in common carrier operations to take full advantage of federal and state income tax benefits, as well as, any cost reimbursement considerations there may be. The two are mutually independent.

If you have any questions regarding this article, other sales and use tax issues, or want to know if you qualify for an exemption contact Joseph Micallef at (916) 369-1200 or visit us on the web at www.aircraftexemption.com.

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