

Notes: This regulation lists the requirements for obtaining a California sales and use tax exemption for aircraft operated under FAR Part 135.

Reg. 1593. Aircraft and Aircraft Parts.--From the electronic tax law library of Victor C. Anvick M.S.Tax E.A. Aviation Tax Specialist (661) 269-9441 e-mail v.anvick@worldnet.att.net 01/21/2002.

California Regulation, Reg. 1593. Aircraft and Aircraft Parts.--

(a) Definitions.

(1) "Aircraft." As used herein, the term "aircraft" means any contrivance designed for powered navigation in the air except a rocket or missile.

(2) "Common Carrier." As used herein, the term "common carrier" means any person who engages in the business of transporting persons or property for hire or compensation and who offers his or her services indiscriminately to the public or to some portion of the public.

(3) "Component Part." As used in subdivision (b)(2), the term "component part" means an item incorporated by securing to the aircraft in compliance with Federal Aviation Administration (FAA) requirements, or United States military equivalent, related to the maintenance, repair, overhaul, or improvement of the aircraft which part is essentially associated with the functional aspects of the aircraft, including those related to safety and air worthiness.

(A) Examples of property which are component parts are engines, passenger seats, and landing gear; items replaced, repaired, or overhauled according to manufacturer service bulletins; items required by air worthiness directives issued by the FAA; life limited parts; and cargo and baggage containers which are designed to be secured, and which are secured, to the aircraft during flight.

(B) Examples of property which are not component parts are general expense items or comfort-related items such as attendant carts, blankets, pillows, or serving utensils.

(b) Application of Tax.

(1) Aircraft. Tax does not apply to the sale of and the storage, use, or other consumption of aircraft sold, leased, or sold to persons for the purpose of leasing, to:

(A) a person who operates the aircraft as a common carrier of persons or property, provided:

1. the person operates the aircraft under authority of the laws of this state, of the United States, or of any foreign government, and

2. the person's use of the aircraft as a common carrier is authorized or permitted by the person's governmental authority to operate the aircraft;

(B) a foreign government for use of the aircraft by that government outside of California; or,

(C) a nonresident of California who will not use the aircraft in this state other than to remove the aircraft from California.

(2) Aircraft Parts.

(A) When tangible personal property becomes a component part of an aircraft described in subdivision (b)(1) as a result of the maintenance, repair, overhaul, or improvement of that aircraft in compliance with FAA requirements, or United States military equivalent, the charges for such tangible personal property, as well as for labor and services rendered with respect to that maintenance, repair, overhaul, or improvement are exempt from tax provided the aircraft will continue to be used in a manner described in subdivision (b)(1).

(B) The exemption described in subdivision (b)(2)(A) applies with respect to tangible personal property purchased and placed in inventory with the intent to thereafter remove the property from inventory and incorporate it as a component part of an aircraft under the conditions specified in subdivision (b)(2)(A), provided the property is so incorporated into a qualifying aircraft. If instead the property is removed from inventory for use in some other manner, the purchaser owes the applicable sales or use tax at that time.

(C) The exemption described in subdivision (b)(2)(A) shall apply only under the following circumstances:

1. the tangible personal property which becomes a component part of the aircraft is purchased on or after October 1, 1996; or,
2. the tangible personal property which becomes a component part of the aircraft was purchased prior to October 1, 1996, but the property first enters California on or after October 1, 1996.

(c) Use of Aircraft.

(1) Common Carriers. In determining whether a purchaser or lessee of an aircraft is using that aircraft as a common carrier of persons or property, only that use of the aircraft by the carrier during the first 12 consecutive months commencing with the first operational use of the aircraft will be considered. This test period does not include, and is extended by, the amount of time, prior to the first use of the aircraft as a common carrier, during which the aircraft is in the physical possession of a repair station certified by the FAA or a manufacturer's maintenance facility undergoing modification, repair, or replacement. The period of this extension/exclusion shall not exceed 12 months. If the purchaser does not own the aircraft for 12 consecutive months commencing with the first operational use, as may be extended as provided herein, then only the period of time commencing with the first operational use that the purchaser owns the aircraft will be considered.

(A) "Operational use" means the actual time during which the aircraft is operated in powered navigation in the air. Operational use includes positioning or repositioning aircraft by flying the aircraft from one point to another ("ferry flights") except when such flights are solely for purposes of having the aircraft repaired. Ferry flights solely for the purpose of transporting the aircraft to a repair location, or solely to return from a repair location, are not operational use, nor are test flights as described in subdivision (d)(2) or personnel training as described in subdivision (d)(4).

(B) If the aircraft is used as a common carrier for more than one-half of the operational use during the test period, the carrier's principal use of the aircraft will be deemed to be that of a common carrier except as provided in subdivisions (c)(1)(D) and (c)(1)(E). Each flight of the aircraft is examined separately for purposes of determining common carrier use. For these purposes, a flight is the powered navigation of the aircraft from one location on the ground or water to the first point on the ground or water at which the aircraft lands.

(C) A flight qualifies as a common carrier use of the aircraft for purposes of the exemption only if the flight is authorized or permitted by the governmental authority under which the aircraft is operated and involves the transportation of persons or property. Where the aircraft does not itself transport the person or property to a location on the ground (or water), the flight does not qualify as a common carrier flight for purposes of the exemption.

1. Following are examples of flights that do not qualify as common carrier use:

a. Student instruction or training flights.

b. Flights to position or reposition aircraft by flying the aircraft from one point to another ("ferry flights").

c. Aerial work such as crop dusting, seeding, spraying, bird chasing, towing of banners and gliders, and fire fighting by dropping water or flame retardant.

d. Aerial photography or surveying, and powerline and pipeline patrol, without regard to whether the flight carries persons or property while the pilot or other crew member engages in the photography, surveying, or patrol.

e. Helicopter operations to perform construction or repair work, or in the lumber industry to reposition fallen lumber within the same general location.

f. Flights carrying persons or property for the purpose of parachute jumps or air drops.

g. Flights for the purpose of search and rescue, without regard to whether the flight carries persons or property while the search and rescue operation is conducted.

2. Following are examples of flights that do qualify as common carrier use when such services are offered indiscriminately to the public or to some portion of the public, provided the flights are authorized or permitted by the governmental authority under which the aircraft is operated:

a. Flights whose purpose is to transport persons or property from the location on the ground or water at which the aircraft takes off to another point on the ground or water at which the aircraft lands, including flights to transport fire fighting personnel, search and rescue personnel, construction workers, and equipment during fire fighting, search and rescue, and construction operations.

b. Sightseeing flights, even if they begin and end at the same airport, area of land, or water that was used for takeoff.

c. Helicopter flights to move large equipment from one location to another where the transportation is the purpose for the flight. For example, a flight with the purpose of moving a large air conditioning unit from a storage facility to the work site could qualify as common carrier use, but a flight with the purpose of positioning the air conditioning unit while it is being attached to the real property would not qualify as a common carrier use even if the positioning occurred as part of the flight moving the unit from the storage facility to the work site.

d. Flights to transport injured persons to medical facilities.

(D) With respect to aircraft sold during the period from January 1, 1987 through December 31, 1996, it shall be presumed that a person is not using the aircraft as a common carrier of persons or property if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed ten percent (10%) of the purchase cost of the aircraft to him or her, or twenty-five thousand dollars (\$25,000), whichever is less. With respect to aircraft sold on or after January 1, 1997, it shall be presumed that a person is not using the aircraft as a common carrier of persons or property if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed 20 percent of the purchase cost of the aircraft to him or her, or fifty thousand dollars (\$50,000), whichever is less. These presumptions may be rebutted by contrary evidence satisfactory to the board showing that the person is using the aircraft principally as a common carrier of persons or property for hire.

(E) With respect to aircraft leased, or sold for the purpose of leasing, during the period from January 1, 1987 through December 31, 1996, it shall be presumed that the aircraft is not used as a common carrier of persons or property if the lessor's yearly gross receipts from the lease of that aircraft to persons for use as common carriers of persons or property do not exceed ten percent (10%) of the cost of the aircraft to the lessor, or twenty-five thousand dollars (\$25,000), whichever is less. With respect to aircraft leased, or sold for the purpose of leasing, on or after January 1, 1997, it shall be presumed that the aircraft is not regularly used as a common carrier of persons or property if the lessor's yearly gross receipts from the lease of that aircraft to persons for use as common carriers of persons or property do not exceed 20 percent of the cost of the aircraft to the lessor, or fifty thousand dollars (\$50,000), whichever is less. These presumptions may be rebutted by contrary evidence satisfactory to the board showing that the aircraft is used principally as a common carrier of persons or property for hire.

(F) For purposes of subdivisions (c)(1)(D) and (c)(1)(E), "gross receipts" do not include compensation paid by the owner or lessor of the aircraft or by related parties for use of the aircraft as a common carrier. "Related parties" include the owner's or lessor's immediate family, entities in which the owner or lessor, or the immediate family of the owner or lessor, hold one-half or more interest, and employees of the owner or lessor while on company business.

(G) For purposes of subdivisions (c)(1)(D) and (c)(1)(E), "contrary evidence" includes sworn oral or written testimony that is offered to prove that a person is engaged in the business as a common carrier. Such testimony would include evidence that a person was engaged in the business as a common carrier but was unable to meet the minimum yearly gross receipts requirements because the aircraft was unfit to fly.

(2) Foreign Governments. A foreign government will be deemed to have acquired an aircraft for use outside of California if the aircraft is promptly removed from the state and the foreign government as owner or lessee does not return the aircraft to this state within 12 months after its removal from this state.

(3) Nonresidents. A nonresident will be considered as not using the aircraft other than to remove the aircraft from California if the aircraft is promptly removed from the state and is not returned to California within 12 months after its removal from this state.

(d) Activities Not Affecting Exemption.

(1) Repair or Warranty Service. The exemptions described by subdivision (b) will not be affected if the aircraft is returned to California within the 12-month period solely for repair or service covered by warranty.

(2) Test Flights. Test flights made for the purpose of determining whether an aircraft will fly in accordance with specifications, or whether the aircraft is in proper operating condition in all its parts, do not constitute use or consumption of the aircraft or its component parts which would disqualify the sale and use of the aircraft or its component parts from the exemptions described in subdivision (b) of this regulation whether such flights occur before or after the sale and delivery of the aircraft. This conclusion is unaffected by the circumstance that personnel of the vendor or vendee, government officials, or other observers may be on board the aircraft during test flights.

(3) Modification, Repair, or Replacement. The work of modification, repair, or replacement performed on an aircraft following its delivery and preparatory to its intended use, which is performed prior to the aircraft's being placed in regular operation by a common carrier, or in the case of a foreign government or nonresident prior to the aircraft's removal from the State of California, will not disqualify the sale and use of the aircraft or its component parts from the exemptions described in subdivision (b). For purposes of this subdivision, flights for the sole purpose of positioning the aircraft at the modification, repair, or replacement facility will be considered a nonoperational use of the aircraft.

(4) Personnel Training. The operation of an aircraft in this state for the purpose of training pilots or other personnel of the aircraft's operator in the proper operation and maintenance of that particular aircraft will not disqualify the sale and use of that aircraft or its component parts from the exemptions described in subdivision (b) whether such operation occurs before or after the sale and delivery of the aircraft, provided the training period is no longer than is reasonably required for that purpose. For purposes of this subdivision, personnel training includes only such training as is necessary to familiarize the personnel with the operation of the subject aircraft. Examples of the type of activities that are not personnel training for purposes of this subdivision, and instead which are operational use, include training for a higher crew member certificate, proficiency or recurrency flights, and flight testing to observe the crew member's ability to satisfactorily perform procedures and maneuvers during the test flight.

(5) Nonrevenue Operations.

(A) The operation of an aircraft for a short period for the transportation of nonrevenue passengers or property by a common carrier for the purpose of advancing the purchaser's interests incidental to its business as a common carrier prior to placing the aircraft in regular operation will not disqualify the sale and use of the aircraft or its component parts from the exemptions described in subdivision (b).

(B) The use of an aircraft following its delivery to a foreign government or nonresident to transport the personnel or property of such foreign government or nonresident during the aircraft's prompt removal from this state will not disqualify the sale and use of the aircraft or its component parts from the exemptions described in subdivision (b).

(e) Aircraft and Aircraft Parts Exemption Certificate. The law provides that for the purposes of the proper administration of the sales and use tax and to prevent the evasion of tax, it shall be presumed that all sales are subject to the tax until the contrary is established. This presumption may be rebutted by the seller as to any sale of aircraft or aircraft parts as defined in subdivision (a) by establishing to the satisfaction of the Board that the gross receipts or sales price from the sale are not subject to the tax or by taking an aircraft or aircraft parts exemption certificate substantially in the form set forth below. The certificate shall relieve the seller from liability for the sales tax or for use tax collection only if it is taken timely and in good faith.

For special provisions affecting aircraft, see Regulation 1610 (18 CCR 1610), "Vehicles, Vessels and Aircraft".

AIRCRAFT OR AIRCRAFT PARTS EXEMPTION CERTIFICATE

I HEREBY CERTIFY: That the aircraft identified below will be used

Principally as a common carrier of persons or property under authority of the laws of California, of the United States, or of any foreign government; or

Outside California by a foreign government; or

Outside California by a nonresident of California which aircraft was not used in this state other than the removal from California

That the purchase of all tangible personal property which I shall purchase from-----

is exempt from tax under section 6366 or 6366.1 of the Revenue and Taxation Code and Regulation 1593. The identification numbers of all aircraft purchased under this certificate are listed below. Until this certificate is revoked in writing, all other property purchased from the seller consists of tangible personal property to become a component part of aircraft in the course of repair, maintenance, overhaul, or improvement of same in compliance with Federal Aviation Administration requirements, or United States military equivalent, which aircraft will be used by the purchaser or the purchaser's lessee in a manner qualifying for exemption under section 6366 or 6366.1 and under Regulation 1593. (The purchaser issuing this certificate can revoke it as to a particular purchase by clearly indicating on a purchase order that the purchase is not exempt under either section 6366 or 6366.1 or under Regulation 1593.)

I UNDERSTAND that in the event any such property is used in any manner other than as specified above, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax.

* NOTE: Revenue and Taxation Code section 6366 creates a rebuttable presumption that an aircraft is not principally used as a common carrier if the owner's or lessor's annual gross receipts from such operations do not exceed 20 percent of the purchase price of the aircraft or fifty thousand dollars (\$50,000), whichever is less. Amounts received for use of the aircraft as a common carrier from the owner or lessor of the aircraft or related parties or employees of the owner or lessor, are excluded from gross receipts for purposes of this presumption.

Identification Numbers of Aircraft Purchased under this Certificate:

Date Certificate Given-----

Purchaser-----

(Company Name)

Address-----

Signature-----

(Signature of Authorized Persons)

(Print or Type Name)

Title-----

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any)-----

Note:

Authority: Section 7051, Revenue and Taxation Code.

References:

Sections 6091, 6366, 6366.1, and 6421, Revenue and Taxation Code.

Special provisions affecting aircraft, see Regulation 1610.

History:

Amended September 28, 1978, effective November 18, 1978. Adds (b)(1) thru (5), renumbers (b) thru (g) to (c) thru (h). Amendment filed June 1, 1988, effective July 1, 1988. Amends subsections (a), (b) and (h). Amendment filed September 17, 1998, effective October 17, 1998.

File: 1593rev