

Memorandum

To: Honorable Antonio Vazquez, Chairman
Honorable Mike Schaefer, Vice Chair
Honorable Ted Gaines, First District
Honorable Malia M. Cohen, Second District
Honorable Betty T. Yee, State Controller

Date: July 6, 2020

/s/ Henry Nanjo

From: Henry D. Nanjo
Chief Counsel

Subject: *July 22-23, 2020 Board Meeting
Chief Counsel Matters – Item G – Rulemaking.
Authorization to Publish Proposed Amendments to Property Tax Rule 202, Allocation of
Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators under Certificate of
Compliance Rulemaking Process*

Effective September 20, 2019 and operative January 1, 2020, Senate Bill (SB) 791 (Stats. 2019, ch. 333) amended several sections of the Revenue and Taxation Code relating to certificated air carriers and scheduled air taxi operators.

At the June 23, 2020 Board Meeting, Board staff presented amended Property Tax Rule 202 (Rule 202) and requested the Board authorize its publication in order to proceed with the certificate of compliance action. The Board adopted staff's recommendation. After the meeting, staff realized that an earlier version of the proposed language of amended Rule 202 had been inadvertently attached to the June 23, 2020 Board Meeting Public Agenda Notice materials.

Staff has attached to this memorandum the correct, final version of Rule 202, in strike out and underline format. Accordingly, staff requests the Board's authorization to replace the incorrect version of the proposed amendments to Rule 202 with the correct version, and to publish a notice of proposed regulatory action with this correct version to make Emergency Rule 202 permanent.

I. Procedural History

This matter has previously come before the Board during its November 19, 2019 meeting to comply with SB 791's requirement that the Board promulgate emergency regulations to implement its provisions. Pursuant to emergency rulemaking requirements, the Board held a public hearing and adopted and authorized for publication amended Property Tax Rule 202, Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators (Rule 202),

as an emergency regulatory action under Government Code section 11346.1. Board staff submitted emergency Rule 202 to the Office of Administrative Law (OAL) on December 16, 2019. Emergency Rule 202 was approved by OAL with an effective date of January 1, 2020.

Emergency regulations approved by OAL remain effective for 180 days.¹ Before the 180-day term expires, a certificate of compliance or a readoption must be filed with OAL, or the emergency regulation will be repealed.² A certificate of compliance makes an emergency regulation permanent and is obtained through the regular rulemaking process. (Gov. Code, § 11346.1, subd. (e); 1 Cal. Code Regs., § 56.) To make the emergency regulation permanent, Board staff initiated a project to amend Rule 202 through the certificate of compliance rulemaking process. Staff developed a draft of proposed amendments to Rule 202 and distributed it to interested parties for comments or suggestions on February 7, 2020 through LTA No. 2020/006. No comments or suggestions were received.

At the Board's June 23, 2020 meeting, staff presented an incorrect version of amended Rule 202 and requested the Board authorize its publication. Staff now requests that the Board authorize the correct version of Rule 202 for publication.

II. SB 791

SB 791 amended section 441, amended and added section 1152, added sections 1153.5 and 1157, and repealed section 1153. Notably, it:

- establishes a new formula for allocating the taxable value of certificated aircraft for use beginning with the 2020-2021 fiscal year, operative for the January 1, 2020 lien date. The new allocation formula used by each county assessor is the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent in California during the 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date (January 1), as compared to the total time during that 12-month period.
- re-establishes the local centralized administrative procedures using a "lead county" system, and provides for the duties of the lead county.
- requires an audit of a commercial air carrier once every four years on a centralized basis by an audit team of auditor appraisers from at least one, but not more than three counties, as selected by the Aircraft Advisory Subcommittee of the California Assessors' Association (CAA), led by the lead county for the commercial air carrier.
- requires the State Board of Equalization to continue to issue an annual Letter To Assessors (LTA) with the "California Standard Flight Times" to be used in calculating the allocation formula.

¹ However, OAL may approve two readoptions of the same emergency regulation and each readoption may extend the emergency regulation's effective period for up to 90 days. (Gov. Code, §11346.1, subd. (h).)

² Emergency Rule 202 is set to expire on June 29, 2020. However, on March 30, 2020, the Governor signed Executive Order N-40-20, which extended deadlines for expiration and readoption of emergency regulations by 60 days. Accordingly, Rule 202, as an emergency rule under Government Code section 11346.1, will expire on August 28, 2020 (unless it is re-adopted to extend the effective period as described above).

SB 791 also requires the BOE, after consultation with the CAA and representatives of commercial air carriers, to promulgate an emergency regulation that implements the newly established allocation formula. SB 791 requires that the emergency regulation be effective by January 1, 2020.

III. Staff's Recommendation

All of the proposed changes to Rule 202 conform to existing law, have been approved previously by the Board as an emergency regulation, and have been authorized by OAL. Furthermore, no comments were received in response to the amendments to Rule 202. Therefore, staff requests the Board adopt and authorize for publication the attached proposed amendments to Rule 202.

If you need more information or have any questions, please contact Henry Nanjo, Chief Counsel, at (916) 323-1094.

HN:ll

Attachment: Proposed Amendments to Rule 202

cc: Ms. Rose Smith
Ms. Indhu Srinivasan

Recommendation by:

Approved:

/s/ Henry Nanjo

/s/ Brenda Fleming

Henry Nanjo, Chief Counsel

Brenda Fleming
Executive Director

Board Approved on: _____

Henry Nanjo, Chief Counsel and
Acting Chief, Board Proceedings Division

BOARD OF EQUALIZATION
PROPERTY TAX RULES

Division 1. State Board of Equalization-Property Tax
Chapter 2. Assessment
Article 5. Situs

Rule 202. Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators.

Authority: Section 15606, Government Code.

Reference: Sections 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, Revenue and Taxation Code.

(a) AIR TAXIS. An aircraft whose owner on the lien date used it in scheduled air taxi service at any time during the ~~representative 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date selected pursuant to subsection (f)~~, or which has been purchased for scheduled air taxi service but not yet put into such service and not yet used in any other service, is assessable under sections 1150 to ~~1456~~ 1157 of the Revenue and Taxation Code and not under Part 10, Division 1, or under other situs provisions of Part 2, Division 1, of the Revenue and Taxation Code.

(b) SITUS. Aircraft of United States registry operated by certificated air carriers (within the meaning of section 1150 of the Revenue and Taxation Code) or scheduled air taxis (within the meaning of subdivisions (a) and (b) of section 1154 of the Revenue and Taxation Code) and flown in intrastate, interstate, or foreign commerce shall be deemed to be situated only in those taxing agencies (within the meaning of section 404 of the Revenue and Taxation Code) in which the aircraft normally make physical contact. The physical contact must be intentional rather than by accident or as the result of an emergency, and it must involve embarking or disembarking of crew, passengers, or freight.

(1) Aircraft flying over the state without landing do not acquire situs for property tax purposes. Conversely, the situs of aircraft that depart from a taxing agency within the state, fly out of the state, and return to the same or another taxing agency within the state without landing outside the state is within the state's taxing jurisdiction throughout the flight.

(2) Situs for property tax purposes is not affected by the legal or commercial domicile of the operator of the aircraft, except that foreign-owned and-based aircraft operated solely in foreign commerce do not acquire a situs within the state for property tax purposes.

~~**(c) ALLOCATION FORMULA.** The allocation formula to be used by each assessor is composed of two factors: (1) ground and flight time and (2) aircraft arrivals and departures.~~

~~—(1) The ground and flight time factor is the ratio of time allocable to an airport during a representative period to the total time during the representative period.~~

~~—(A) Time allocable to an airport is the amount of time a certificated aircraft (or scheduled air taxi) is on the ground at the airport, plus the portion of incoming and outgoing flight time computed pursuant to subsection (d). In computing the time allocable to the airport, the following shall be excluded: (1) all ground and flight time prior to the aircraft's first entry into the revenue service of the air carrier in control of the aircraft on the current lien date; and (2) all ground time in excess of 168 hours during each period the aircraft spent 720 or more consecutive hours on the ground.~~

~~—(B) Total time is the sum of the time allocable to the airport and the time allocable elsewhere during the representative period. In computing the total time, the following shall be excluded: (1) all ground and flight time prior to the aircraft's first entry into the revenue service of the air carrier in control of the aircraft on the current~~

~~lien date. The ground and flight time factor shall be multiplied by 75 percent to obtain a weighted ground and flight time factor.~~

~~(2) The aircraft arrivals and departures factor is the ratio of the number of arrivals at and departures from an airport during a representative period to the total number of arrivals at and departures from all airports during the representative period. This factor shall be multiplied by 25 percent to obtain a weighted arrivals and departures factor.~~

~~(3) The weighted ground and flight time factor shall be added to the weighted arrivals and departures factor. The sum of the two weighted factors yields the allocation ratio to be applied to the full cash value of the aircraft to determine the full cash value allocable to the airport.~~

(c) ALLOCATION FORMULA. The allocation formula to be used by each assessor is the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent within the state during the 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date as compared to the total time during that 12-month period.

(1) Time in the air consists of flight time and taxi time within California's borders.

(A) Time in the air shall be based on the State Board of Equalization's "California Standard Flight Times" table in the most recently published Letter To Assessors that address intrastate and interstate standard flight times.

(B) These standard times shall be multiplied by the number of departures to and from the airports listed in the Letter To Assessors.

(C) Absence of a flight on the State Board of Equalization's "California Standard Flight Times" table in the most recently published Letter To Assessors that addresses intrastate and interstate standard flight times does not preclude the inclusion of that flight in the allocation formula.

(D) Commercial air carriers shall notify, in writing, the lead county for that air carrier of any missing flights not listed in the "California Standard Flight Times" table in the most recently published Letter To Assessors that address intrastate and interstate standard flight times.

(2) Time on the ground is all time in the state that is not flight or taxi time.

(A) Time on the ground at each airport shall be reported on a summary basis by fleet type pursuant to subdivision (m) of section 441 of the Revenue and Taxation Code.

(B) Time on ground allocated to heavy maintenance that requires a certificated aircraft or scheduled air taxi to be removed from revenue service shall be excluded.

i. An air carrier claiming such exclusion shall identify such maintenance and supply sufficient documentation that will enable the assessor to confirm the amount of time the aircraft was not in revenue service.

ii. Routine line maintenance that does not require removal from revenue service shall not be excluded from time allocable to the airport.

(3) Time allocable to each airport is the amount of time a certificated aircraft or scheduled air taxi is on the ground at the airport computed pursuant to subdivision (c)(2) of this rule, plus the portion of incoming and outgoing flight time computed pursuant to subdivision (c)(1) of this rule.

(4) All time, both in the air and on the ground, that certificated aircraft have spent within the state prior to the aircraft's first entry into the revenue service of the air carrier in control of the aircraft on the current lien date shall be excluded from the time-in-state factor.

(d) ALLOCATION OF FLIGHT TIME. For aircraft flying from one California airport to another California airport, the flight time attributable to each airport is one-half the flight time between the airports. For aircraft arriving from an airport outside the state or leaving for an airport outside the state, the flight time from or to the state boundary shall be allocated to the California airport in which the aircraft first lands or last takes off, as the case may be. The flight time to the state boundary shall be computed as follows: (1) determine the mileage from the airport to the state boundary crossing point on a great circle flight to the first landing point outside the state; (2) divide this mileage by the total great circle mileage from the airport to the first landing point outside the state; (3) multiply this percentage by the total flight time from the airport to the first landing point outside the state. The same procedure shall be used for inbound flights from outside the state. To allow for differences in take-off, landing, and cruising speeds and for varying take-off and landing patterns, the time allocated to an airport shall not be less than five minutes for an incoming or an outgoing flight. In lieu of the actual flight time for a single flight, the average flight time between two ports, or between a port and the state line, for two or more flights of a single carrier or of more than one carrier shall be used when such an average is promulgated by the board unless the assessor has documented evidence which justifies departure from such average time.

(e) SOURCES OF ALLOCATION DATA. ~~For scheduled operations, arrivals and departures and ground and flight time shall be derived from the carrier's operating schedules.~~ For all nonscheduled operations, including, but not limited to, overhaul, pilot training, charter, military contract flights, and standby services, ground time and departures shall be derived from the carrier's recorded operations.

(f) REPRESENTATIVE PERIOD. ~~Annually, on or before December 20, the board shall consult with the assessors of the counties in which air carriers' aircraft normally make physical contact. On or before January 15, the board shall designate a representative period to be used by all assessors in assessing the aircraft of each carrier for the forthcoming fiscal year.~~

(f) LEAD COUNTY ASSESSOR'S OFFICE.

- (1) After consulting with commercial air carriers in the state, the Aircraft Advisory Subcommittee of the California Assessors' Association shall do both of the following:
 - (A) On or before March 1, 2020 and on or before each March 1 thereafter, designate a lead county assessor's office for each commercial air carrier operating certificated aircraft in California.
 - (B) Every third year thereafter, redesignate a lead county assessor's office for each of these air carriers, unless an air carrier and its existing lead county assessor's office concur to waive this redesignation.
- (2) The lead county assessor's office shall do all of the following:
 - (A) Calculate an unallocated value of the certificated aircraft of each commercial air carrier to which that assessor is designated.
 - (B) Electronically transmit to the assessor of each county in which the property described in subdivision (f)(1) of this rule has situs for the assessment year the values determined by the lead county assessor's office under subdivision (f)(1) of this rule.
 - (C) Receive the property statement, as described in subdivision (m) of section 441 of the Revenue and Taxation Code, of each commercial air carrier to which the assessor is designated.
 - (D) Receive and electronically transmit to the assessor of each affected county flight data received pursuant to paragraph (3) of subdivision (m) of section 441 of the Revenue and Taxation Code.
 - (E) Lead the audit team described in subdivision (f)(4) of this rule when that team is conducting an audit of a commercial air carrier to which the assessor is designated.

- (F) Notify, in writing, each commercial air carrier for which the assessor has been designated of this designation on or before the first March 15 that follows that designation.
- (G) Notify, in writing, the State Board of Equalization, of any missing flights not listed in the "California Standard Flight Times" table in the most recently published Letter To Assessors that addresses intrastate and interstate standard flight times.
- (3) The county assessor of each county in which the personal property of a commercial air carrier has situs for an assessment year is solely responsible for assessing that property, applying the allocation formula set forth above and enrolling the value of the property in that county, but, in determining the allocated fleet value for each make, model, and series of certificated aircraft of a commercial air carrier, the assessor may consult with the lead county assessor's office designated for that commercial carrier.
- (4) An audit of a commercial air carrier shall be conducted once every four years on a centralized basis by an audit team of auditor-appraisers from one to three counties, as determined by the Aircraft Advisory Subcommittee of the California Assessors' Association. Such audit shall encompass all of the California personal property and fixtures of the air carrier and is deemed to be made on behalf of each county for which an audit would otherwise be required under section 469 of the Revenue and Taxation Code.
 - (A) The audit team shall be the point of contact for all aircraft-related questions to or from each county and the commercial air carrier.
 - (B) The audit team shall also ensure that all aircraft-related concerns regarding the taxable value of the aircraft and aircraft parts are resolved with each county before finalizing the audit.

(g) APPLICATION OF ALLOCATION FORMULA. The aircraft of certificated air carriers and scheduled air taxi operators shall be segregated by subfleet type, and a separate allocation ratio shall be computed for each subfleet type which ~~that~~ has established a taxable situs within the state, excluding those makes within a type which ~~that~~ have not established a taxable situs within the state. Each allocation ratio shall then be applied to the total value of the carrier's aircraft of each subfleet type to which the allocation ratio applies, ~~excluding those makes within a type which have not established a tax situs within the state.~~ Annually, the types shall be designated by the board in the same manner and at the same time the representative period is designated. Examples of the types are as follows:

- ~~—(1) Piston powered~~
- ~~—(2) Turboprop powered~~
- ~~—(3) Helicopter~~
- ~~—(4) Turbojet and Turbofan powered~~
 - ~~(A) Two engine~~
 - ~~(B) Three engine~~
 - ~~(C) Four engine~~
 - ~~(D) DC-8-60 series~~
 - ~~(E) Two engine widebody~~
 - ~~(F) Three engine widebody~~
 - ~~(G) Four engine widebody~~