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TO COUNTY ASSESSORS AND INTERESTED PARTIES:

EXEMPTION FOR AIRCRAFT OF HISTORICAL SIGNIFICANCE

Three previous Letters To Assessors (LTA's) have been issued on the Historical Aircraft Exemption: LTA's 87/67, 88/36, and 89/84. These LTA's announced passage of the exemption, identified the applicable statutory provisions, discussed implementation procedures, announced adoption of a statutory time frame for annual filing for the exemption, and provided additional interpretations of subdivisions (b) and (c) of Revenue and Taxation Code section 220.5.

In the interest of promoting uniformity and consistency in the application of the exemption, this letter consolidates the issues identified in the prior LTA's and provides additional interpretation of "general transportation." This letter supersedes all prior LTA's on this topic.

Aircraft of Historical Significance is defined by section 220.5 in part as :

. . . any aircraft which is an original, restored, or replica of a heavier than air powered aircraft which is 35 years or older or any aircraft of a type or model of which there are fewer than five in number known to exist worldwide.

The exemption shall only apply if all of the following conditions are met:

- (1) The assessee is an individual owner who does not hold the aircraft primarily for purposes of sale.
- (2) The assessee does not use the aircraft for commercial purposes or general transportation.
- (3) The aircraft is available for display to the public at least 12 days during the 12-month period immediately preceding the lien date for the year for which the exemption is claimed. If the aircraft was first made available for public display less than 12 days prior to the lien date, the exemption may be granted if the claimant certifies in writing that the aircraft will be made available for public display at least 12 days during the 12-month period commencing with the first day the property was made available for public display.

- (4) An individual owner as referenced in (1) above is a live person, not a legal entity such as a corporation or partnership.
- (5) A fee of thirty-five dollars (\$35) shall be charged and collected by the assessor upon the initial application for an exemption pursuant to section 220.5. An annual affidavit is required for exemption although the \$35 fee is only required upon initial application in any given county.
- (6) The claimant shall provide all information required and answer all questions contained in an affidavit furnished by the assessor. The claimant shall sign and swear to the accuracy of the contents of the affidavit before either a notary public or his or her designee, at the claimant's option. The assessor may require additional proof of the information or answers provided in the affidavit before allowing the exemption.

As enacted, section 220.5 lacks precise standards and definitions. Therefore, terms in the statute, such as *general transportation* and *display to the public*, are subject to varying interpretations. In the interest of promoting uniformity in the application of the exemption, assessors and owners of historical aircraft have asked the Board several interpretive questions. We believe the questions and answers presented below reflect a reasonable interpretation of section 220.5 and, if applied, will provide uniform administration of this exemption statewide.

A. AVAILABLE FOR DISPLAY TO THE PUBLIC

Question 1: *What constitutes "available for display to the public"?*

Answer: "Available for display to the public" means actual display or documented willingness to display at either (a) an organized air show, (b) a museum, or (c) a special designated area set aside for historical aircraft open to the public.

To qualify as available for display to the public under any situation, other than (a), (b), or (c) above, an individual must document that the aircraft is displayed in such a manner that the general public may reasonable be assumed to be aware that public viewing is clearly invited, and that there are reasonable accommodations to allow public viewing of the aircraft.

To qualify as available for display under any situation also means that (1) there must be a reasonable effort to make the general public aware of the display and (2) there must be reasonable viewing hours.

Question 2: *Does notifying the public that the aircraft will be available for display at the owner's home, by appointment only, qualify as "public display"?*

Answer: No. Making the aircraft available by appointment only is not a clear invitation for viewing issued to the general public. Also, an owner's home site will lack reasonable accommodations for public viewing in most instances.

Question 3: *Is an aircraft stored on private property, but visible from a state highway, on "public display"?*

Answer: No. The plane must be displayed in a place where deliberate public viewing can be accommodated during reasonable viewing hours.

Question 4: *Please explain the significance of the word "available" as used in the statute.*

Answer: As used in the statute, "available" means that if an aircraft was formally scheduled for display at a qualifying site and the display was canceled (e.g., because of rain), the date would count as a day available for display.

Question 5: Must a display be in California?

Answer: No. There is no requirement that the aircraft display site be in California.

Question 6: *Must the applicant list at least twelve future dates to qualify for the exemption under prospective treatment?*

Answer: No. For anticipated display in the initial qualifying year, the applicant need only certify that the aircraft will be made available for display at least 12 days in order to qualify for the exemption. The assessor can request additional information at a later date to verify compliance. If, at a later date, it is determined that the owner did not meet the exemption qualifications, an escape assessment can be issued.

B. AIRCRAFT USE

Question 7: *What constitutes "commercial purpose"?*

Answer: Conveyance of passengers or goods for any business reason or use of the aircraft for any revenue-producing activity would constitute commercial purpose.

Question 8: *If an aircraft is depreciated as business property, or expenses are written off as business expenses, is the aircraft being used for commercial purposes?*

Answer: Yes. Owner recognition of business-related aircraft use is factual documentation that the aircraft is used for commercial purposes.

Question 9: *What constitutes use as "general transportation"?*

Answer: "General transportation" means conveyance of or travel from one place to another. Use of an aircraft for general transportation means flight of the aircraft from one place to another, for the primary purpose of transporting passengers or goods from one location to another.

Question 10: *Does recreational flying constitute "general transportation"?*

Answer: To constitute general transportation there must be flight from one place to another, not flights that originate and end in the same place with no intervening stop. Recreational flying, maintenance-related flying, and flights necessary to maintain the owner's pilot's certificate would not constitute general transportation unless the flights are primarily for the purpose of transporting goods or persons to another location. Flights to and from historical aircraft shows or displays do not constitute general transportation.

C. PROGRAM ADMINISTRATION

Question 11: *Is the \$35 fee, charged and collected by the assessor upon the initial application for exemption of a specific aircraft, a one-time fee per county regardless of a later change in county situs?*

Answer: Yes. If an owner removes an aircraft from the taxing jurisdiction of a county and then returns the aircraft at a subsequent lien date, the fee is not required for a subsequent application filed for the same aircraft.

Question 12: *Is the fee per application or per aircraft?*

Answer: A separate application and fee is required for each aircraft. If an individual owns multiple potentially qualifying aircraft, then separate applications are required for each of the aircraft, with a fee charged for each application.

Question 13: *If an aircraft is moved to another county, and an exemption application is filed in the second county, should the second county charge the fee?*

Answer: Yes. The application filed in the second county is the initial application in that county.

D. BOARD STAFF INTERPRETATION

This letter also provides the Board staff's interpretation of both a technical and procedural requirement within the existing language contained in section 220.5 as follows.

Suggested interpretation of the technical requirement in section 220.5(b)(3):

Available for display to the public at least 12 days" shall be defined as: displayed or available for display for 12 periods with each period being four or more hours during one twenty-four hour period as described below:

- (1) If airworthy, at least 6 of the 12 displays are as defined under (A) below.
- (2) If not airworthy and/or being restored, any or all of the 12 displays are as defined under (A) or (B) below.
 - (A) "display" is defined as flown, taxied, or otherwise moved to a location other than the normal storage location for display to an organized group of persons, for an announced display to the general public, or for permanent display at a museum.
 - (B) "display" is defined as displayed in the normal storage location to an organized group of persons or as part of an announced display to the general public, or during posted day-time viewing periods of four or more hours with public accessibility.

Suggested interpretation for the procedural requirement in section 220.5(c):

After the initial application tax year, the applicant shall sign a "continuing qualification affidavit," to be sent by the assessor each year with compliance enforced by random audit.

As a point of further clarification, the Board staff has interpreted *general transportation* in section 220.5(b)(3) to include travel for the primary purpose of transporting persons or goods from one location to another; but it does not include flights to and from historical aircraft shows and displays. It also does not include flights for repair or maintenance purposes nor does it include flights that originate and end in the same place with no intervening stop.

The guidance contained in this letter represents the analysis and opinions of the Property and Special Taxes Department staff based on present laws and is not binding on any person or public entity. If you have further questions, please contact the Assessment Policy and Standards Division at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
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