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March 15, 2006

Re: Aircraft of Historical Significance

Dear Mr. _____ :

This is in response to your facsimile dated April 7, 2005, addressed to Chief Counsel Kristine Cazadd, wherein you seek our opinion regarding the possibility of retroactively applying the exemption for aircraft of historical significance to an airplane owned by your father. For the reasons discussed below, the exemption may not be applied retroactively.

Facts

You relate the following facts. Your father, _____, owns a 1943 B-52 airplane. The airplane has been on display at _____, in _____, California, since May, 1985. A letter from _____ states that the airplane is based at that location approximately 340 days a year and is parked on a ramp available for public viewing. It is not used for commercial purposes or general transportation.

For 8 years during the period 1991 through 2003, your father applied for and received the exemption for aircraft of historical significance. But due to his worsening memory and unawareness of the law, there were years during that time period that he did not apply for the exemption. As a result, he was assessed property tax on the aircraft which he has not paid. According to the listing of defaulted bills that you provided to us, your father now owes over \$25,000 in back taxes and interest.

Legal Analysis

Aircraft of historical significance is exempt from taxation. (Rev. & Tax. Code, § 220.5, subd. (a).) Under Revenue and Taxation Code¹ section 220.5, subdivision (d), “aircraft of historical significance” means “any aircraft that is an original, restored, or replica of a heavier than air powered aircraft that 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.”

Section 220.5, subdivision (b) states that aircraft of historical significance are exempt from property tax provided 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; and

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise noted.

(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. . . .

Your father's airplane meets the definition of an aircraft of historical significance under subdivision (d) of section 220.5. It appears that the aircraft has been eligible for the exemption each year at issue since your father is an individual owner: (1) who does not hold the aircraft for sale; (2) does not use the plane for commercial purposes or general transportation; and (3) the plane has been on public display well over 12 days in each 12-month period from May 1985 to the present.

In addition to these requirements, section 220.5, subdivision (c) provides that the assessee must also complete an affidavit, which functions as an application for the exemption:

When claiming an exemption pursuant to this section, the claimant shall provide all information required and answer all questions contained in an affidavit furnished by the assessor. The claimant shall sign the affidavit under penalty of perjury. The assessor may require additional proof of the information or answers provided in the affidavit before allowing the exemption.

Further, pursuant to subdivision (a) of section 255 and section 254, the affidavit for claiming the exemption must be filed annually with the assessor between the lien date and 5 p.m. on February 15. The only provision for late filing is made in section 276.5, which provides that a person filing an affidavit after February 15 but on or before August 1 of the assessment year is eligible to reduce the assessment by 80 percent of the full reduction that would have been allowed had the affidavit been filed timely. Furthermore, this provision for late filing is effective only for 2004 and later years.

Here, your father failed to file the affidavits for claiming the exemption for 8 of the 12 years in the period from 1991 to 2003. Under the California Constitution, the exemption for these years is deemed to be waived. Section 6 of article XIII of the California Constitution states that the "failure in any year to claim, in a manner required by laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year." We are unaware of any legal basis to disregard these waivers or to apply the exemption retroactively. Therefore, while your father may have qualified for the aircraft of historical significance exemption during the years in question, there is no authority to retroactively apply the exemption for years in which the applications were not timely filed.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Richard S. Moon
Tax Counsel