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April 20, 1990

Ms. Melanie K. Wellner
Deputy County Counsel
Nevada County Counsel
Eric Rood Administration Center
950 Maidu Avenue, P.O. Box 6100
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Re: Appeal of Aircraft Situs

The issue of the quantum of contract of property and its owner with a state necessary to establish a tax situs has been much litigated, not always to a consistent result. The issue is essentially one of fact to be determined by principles distilled from an overabundance of authority. Ice Capades, Inc. v. County of Los Angeles, 56 Cal. App. 3d 745 at 753.

Dear Ms. Wellner:

Your letter of April 6, 1990 requested our opinion on two questions of the Nevada County Assessment Appeal Board:

1. Whether the Board is empowered to make determinations regarding airplane situs or is that a function solely of the assessor's office?
2. If so empowered, would our staff respond to the situs issue?

In general, it is appropriate for the Assessment Appeals Board to hear questions of fact and more efficient for pure legal questions to proceed directly to court via suit for refund upon the supervisors' denial of a claim. Unfortunately, the rule permits taxpayer's choice and since the AAB presents a less costly alternative opportunity for a quick, favorable decision pure legal questions are being brought to the board. (See Section 27.2, Scope of Hearing, 601 Taxing California Property 2d.)

No court has specifically ruled on whether or not a situs question can be heard by an appeals board but since it does involve considerable findings of fact we would recommend that it be heard. It would provide fairness to the taxpayer by way of a "second opinion" on the issue and it would also resolve any question of exhaustion of administrative remedy should the matter proceed to judicial review.

Having concluded that situs is within the purview of the Board, it would be incongruous for us to decide the issue. We can, however, invite your attention to the current status of judicial review on that subject.

First, it should be noted that we would agree with the assessor's application of Property Tax Rule 205. Section (a) as the general section applies to nonspecific movable property. Section (c) expresses a specific exclusion but section (b) specifically applies to nonscheduled general aircraft and excludes scheduled aircraft by the statutory reference. However, this rule only applies to disputed situs between counties entirely within the state of California.

In Ice Capades cited above and more appropriately Geometrics v. Co. of Santa Clara (1982) 127 Cal.App.3d 940, the courts have held that the commerce clause of the U.S. Constitution controls disputed interstate situs. The former was first to establish an apportionment of the property tax and the latter specifically applies to aircraft. Under these decisions, the Board is first required to find whether or not the aircraft has acquired a tax situs in Nevada County and if so to apportion the assessment on the ratio of the number of days in the county as to 365. Your attention is invited to the court's treatment of the "East Show" in Ice Capades.

In the materials forwarded with your letter, there is not sufficient information to decide either situs or apportionment.

The taxpayer has presented domicile of ownership at [Redacted], Nevada, but for insurance purposes he claims that the property (aircraft) is principally based at the [Redacted] City Airport in the State of Washington.

In contrast, the assessor has evidence that the owner has maintained hangar space for the aircraft at the [Redacted] Airport from 1984 through 1989 and the taxpayer (letter of August 22, 1990) admits that the aircraft is there for generally three to five months where its scheduled maintenance is performed.

To resolve this conflict, you need to obtain the flight and maintenance log of the aircraft (not the pilot) so that the actual location of the aircraft can be ascertained on a regular basis. You may wish to use calendar 1989 as a test period or reconstruct back through 1984 to see if that would establish a more representative period. Only by comparing the relative amount of time with the various locations in conjunction with the other functional facts can you absolutely resolve the questions of situs and apportionment.

In our view, the assessor had sufficient information to enroll the aircraft and make the assessment. Domenghini v. San Luis Obispo County, 40 Cal.App.3d 689. On appeal, the assessor is vested with the presumption of correctness of the assessment and the burden of proof of nonsitus and/or apportionment shifts to the taxpayer. Glidden Co. v. Co. of Alameda, 5 Cal.App.3d 371. The taxpayer can meet this burden by proving actual location of the aircraft with the logs or by some other convincing evidence. If such proof is not forthcoming, then we would recommend that the assessment be upheld.

Our intention is to provide quick, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

James M. Williams
Tax Counsel

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