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Executive Director

June 29, 2004

Re: Jurisdiction of Assessment Appeals Board – Request for Legal Opinion

Dear Mr. :

This is in reply to your letter of May 26, 2004 addressed to Assistant Chief Counsel Kristine Cazadd in which you request a legal opinion concerning an assessment appeals board's jurisdiction to define words and phrases used in a property tax rule that implements and interprets an exemption statute. You represent an airline that has appealed an assessor's determination that "dismantling" is not an activity that qualifies aircraft for the exemption pursuant to Property Tax Rule 138. The deputy county counsel who acts as counsel to the assessment appeals board opined that the board has no jurisdiction to decide the question. You pose three questions, restated below, asking the board legal staff's opinion as to the scope of an assessment appeals board's jurisdiction in this matter and in exemption matters generally and you ask whether dismantling is equivalent to modification, one of the qualifying purposes under Rule 138.

For the reasons set forth below, an assessment appeals board does not have the jurisdiction to interpret Rule 138 by defining the terms used therein because such a determination would constitute a hearing on an application appealing a denial of a qualification for an exemption. An assessment appeals board has no authority to hear and decide welfare exemption issues or issues related to any other exemption program. With respect to the proper interpretation of Rule 138, the dismantling of an aircraft is not a qualifying purpose within the meaning of the rule. However, the aircraft may qualify for the business inventory exemption if it is intended to be offered for sale or lease in the ordinary course of business.

Facts Presented

Your client, (Air) Airlines, Inc. has claimed the property tax exemption pursuant to Property Tax Rule 138 for certain aircraft that are being dismantled at a storage facility in County. You contend that the dismantling of an aircraft constitutes a "modification" of that aircraft, one of the qualifying purposes described in subsection (b)(1) of the rule. Your client filed an application appealing the assessor's determination that the aircraft did not qualify for the exemption. At the hearing on the application, the appeals board heard the presentations of the applicant and assessor and voted to

seek a legal opinion from the county counsel. The county counsel's opinion concluded that the matter was not within the board's jurisdiction. Based on the foregoing facts, you posed specific questions in your request for this opinion letter that I have restated below followed by our responses.

Law and Analysis

Does an AAB have jurisdiction to decide the meaning of words and phrases in the Revenue and Taxation Code and to apply them to a set of facts as presented by the applicant and the assessor? Is the jurisdiction of an AAB limited strictly to issues of valuation, as opined by the County Counsel, or can it include defining words, legal issues and concepts to facilitate a valuation decision?

Property Tax Rule 302 sets forth the function and jurisdiction of an assessment appeals board or board of equalization. The provision in issue, subsection (b) of the Rule, provides that "[e]xcept as provided in subdivision (a)(4), the board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied." Subdivision (a)(4), the single exception to subsection (b), provides that an appeals board has jurisdiction "[t]o determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation."

Thus, an appeals board has no jurisdiction to hear and decide an application involving any matter of exemption qualification, except to determine the proper classification of property that may cause the property to be exempt. An appeals board in the exercise of the valuation function must necessarily determine the proper classification of property in order to value it correctly. For that reason, an appeals board has the authority to make such determinations, notwithstanding the fact that property may qualify for an exemption based on its classification.

The principal qualification for the exemption pursuant to Rule 138 is not the classification of the property but rather the purpose for which the property, an aircraft, is physically present in the state. Subsection (a) of the Rule provides that "[a]ny aircraft, certificated or noncertificated, which is in California on the lien date solely for *the purpose of being repaired, overhauled, modified, or serviced* is exempt from personal property taxation." (italics added). The statutory authority for Rule 138, Revenue and Taxation Code section 220, enumerates the same qualifying purposes. Air's application requests that the appeals board determine that the dismantling of an aircraft is a form of "being . . . modified" that would qualify the aircraft for the exemption. However, such a determination is an interpretation of the exemption qualification provision of the rule, which is precisely the type of issue that an appeals board has no authority to hear and decide pursuant to Rule 302, subsection (b). That is, Air is asking the appeals board to "consider allegations that claims for exemption from property taxes have been improperly denied."

In response to the second part of your question, the jurisdiction of an appeals board is not limited strictly to issues of valuation, as opined by the County Counsel. A board has the authority to define words, legal issues and concepts to facilitate a valuation decision. For example, section 1605.5 provides that an appeals board shall hear and decide applications for assessment reduction involving the issue of whether property has undergone a change in ownership or has been newly constructed. However, the authority to define statutory and rule language and to make legal determinations is limited to the performance of its property valuation function. As stated above, an appeals board has no jurisdiction to define words, legal issues and concepts for the purpose of deciding exemption issues.

2. Does Property Tax Rule 302(b) apply to questions pertaining to issues of exempt aircraft (Rule 138), the business inventory exemption, the exemption of application software, exempt licensed motor vehicles, exempt intangible property and all of the other discrete exemptions provided in the Revenue and Taxation Code? Or does it apply narrowly to an AAB granting a "welfare exemption" where the Assessor had deemed one to not be appropriate?

The language of Rule 302, subsection (b) does not specify that an appeals board has no jurisdiction to hear and decide only one type of exemption. Thus, this limitation on the board's jurisdiction applies to all exemptions, and not only to welfare exemption determinations.

3. On the question at issue in the instant case, is it appropriate to include aircraft being "dismantled" within the definition of "being . . . modified" as used in Property Tax Rule 138(a)?

No. Aircraft being "dismantled" are not within the definition of "being . . . modified" within the meaning of Rule 138. However, the aircraft may qualify for the business inventory exemption under Rule 133.

The first step in ascertaining the meaning of language of a code section is to determine whether the words used unequivocally express the Legislature's intent. *Morse v. Municipal Court* (1974) 13 Cal.3d 149, 156. "Modify" is defined as "to make basic or fundamental changes in often to give a new orientation to or to serve a new end." *Merriam-Webster's Collegiate Dictionary, Tenth Edition* (2000), p.746. In its most general sense, then, the word "modify" means to make changes to an aircraft. You argue that the word "dismantle" connotes change and, thus, is a modification within the meaning of the Rule. The assessor takes the position that the Rule "only applies to planes being serviced and returning to revenue service."

Where a word in a statute is susceptible of more than one meaning, the rules of statutory construction are used to interpret the provision in a manner consistent with the Legislature's intent. The applicable rule in this instance, the doctrine of *noscitur a sociis*, declares that the meaning of a word may be ascertained by reference to the meaning of other terms which the Legislature has associated with it in the statute, and that its scope may be enlarged or restricted to accord with those terms. *People v. Rogers* (1971) 5 Cal.3d 129, 142 (conc. and dis. opn. of Mosk, J.) When a statute contains a list of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items

similar in nature and scope. *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1011-1012.

To apply the doctrine, the meaning of the words "being modified" must be determined with reference to the other qualifying purposes enumerated, "being repaired, overhauled, . . . or serviced", and the definition of "modified" must accord with those terms. The verb "repair" is defined as "to restore by replacing a part or putting together what is torn or broken" *Merriam-Webster's Collegiate Dictionary, Tenth Edition* (2000), p. 988 , "service" is defined as "to repair or provide maintenance for" *Id.* at p. 1067, "overhaul" is defined as "to repair or to renovate, revise or renew thoroughly" *Id.* at p. 827. In our view, all of those activities have the purpose of keeping an aircraft in operation or returning an aircraft to operation. Thus, the meaning of the word "modify" may include only those activities that may be performed to keep an aircraft in operation or to return it to operation.

The word "dismantle" is defined as "to take to pieces" or "to destroy the integrity or functioning of". *Id.* at p.333. The activity of dismantling is not consistent with repairing or servicing an aircraft but rather, has the effect of taking it out of operation. Thus, an aircraft in the state for the purpose of being dismantled is not "being modified" within the meaning of Rule 138 or section 220. Therefore, such an aircraft would not qualify for the exemption pursuant to those provisions.

The dismantled aircraft may qualify for exemption as business inventory pursuant to section 129 if they are "intended for sale or lease in the ordinary course of business." Rule 133, the regulation that implements and interprets section 129, defines the terms and phrases used in that section. Subparagraphs (A) and (B) of subsection (a)(1) of rule 133 provides that

> (A) The phrase"ordinary course of business" does not constitute a limitation on the type of property which may be held for sale or lease, but it does require that the property be intended for sale or lease in accordance with the regular and usual practice and method of the business of the vendor or lessor.
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> (B) The phrase "goods intended for sale or lease" means property acquired, manufactured, produced, processed, raised or grown which is already the subject of a contract of sale or which is held and openly offered for sale or lease or will be so held and offered for sale or lease at the time it becomes a marketable product. Property, which is ready for sale or lease, must be displayed, advertised or otherwise brought to the attention of the potential purchasers or lessees by means normally employed by vendors or lessors of the product.

Thus, for a dismantled aircraft to qualify for exemption pursuant to Rule 133, the owner must demonstrate that the aircraft is intended for sale or lease in accordance with the regular and usual practice and method of a commercial company that sells or leases aircraft or aircraft parts. The aircraft owner should present evidence representing that it intends to sell or lease the aircraft

and have sufficient documentation available for review by the assessor which demonstrates that the sale or lease is part of its regular business practice and that the aircraft are openly offered for sale or lease and advertised accordingly.

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.

Very truly yours,

/s/ Lou Ambrose

Lou Ambrose
Supervising Tax Counsel

LAA:eb
Prec/Aircraft/04/03-LAA.doc
Prec/Gen Exemption/04/

cc: Hon.
County Assessor

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70