



November 1, 1982

Application of California Property Tax
to Foreign-Owned Aircraft

In a letter dated September 29, 1982 to _____ of the United States Department of State requested information concerning any state and local taxes which are currently levied on foreign airlines by the State of California. This is in response to your request for a memorandum on the application of property tax to foreign-owned aircraft.

I. Aircraft Owned by a Foreign Government.

Revenue and Taxation Code, Section 5331 exempts aircraft owned by a foreign government from personal property taxation. Thus, aircraft belonging to airlines such as KLM and SAS which are owned by the governments of their respective countries of registry, are automatically exempt from property taxes.

II. Aircraft Owned, Based, and Registered Abroad and Used Exclusively in International Commerce.

Pursuant to both case law and by board rule, aircraft owned, based, and registered abroad and used exclusively in international commerce is exempt from property taxes in California.

In Scandinavian Airlines System, Inc. v. County of Los Angeles (1961) 56 Cal. 2d 11, cert. denied, 368 U.S. 899, the City and County of Los Angeles levied an apportioned ad valorem tax upon airplanes owned by Scandinavian Airlines System. The airplanes operated between Copenhagen, Denmark and Los Angeles. The planes landed in the United States only at Los Angeles International Airport and remained there for less than 34 hours on each flight. The court ruled that ad valorem property tax levied upon aircraft owned, based, and registered abroad and used exclusively in international commerce, was unconstitutional under the commerce clause.

Board Rule 202(b) provides that foreign owned and based aircraft operated solely in foreign commerce do not acquire situs within the state for property tax purposes.

III. Foreign Aircraft Engaged in Interstate Commerce.

The taxability of foreign aircraft also used in interstate commerce is not covered by statute or by board rule. In Japan Lines, Ltd. v. County of Los Angeles (1979) 441 U.S. 434, 60 L. Ed. 2d 336, the United States Supreme Court decided that instrumentalities of commerce that are owned, based, and registered abroad and that are used exclusively in international commerce, cannot be subjected to apportioned ad valorem property taxation by a state. The Court specifically noted that it did not reach the question as to the taxability of foreign owned instrumentalities engaged in interstate commerce. 60 L. Ed. 2d at 345, n. 7. However, this point of law is moot under current F.A.A. and C.A.B. regulations. By F.A.A. and C.A.B. regulation, foreign operators cannot get authority to conduct business in the United States. A foreign carrier may, for example, land at San Francisco International Airport and continue on to New York as part of a continuation of the international flight, but it may not take on additional passengers. This information was confirmed by Mr. Roger Grunert, F.A.A. Western Division Program Manager.

IV. Conclusion.

Aircraft owned by a foreign government is exempt from property tax. Further, foreign owned, based, and registered aircraft used exclusively in international commerce is not taxable in California. Since foreign operators cannot engage in interstate commerce, no foreign aircraft is subject to property tax. Informal telephone calls to the San Mateo County Assessor's Office (San Francisco International Airport) and the Los Angeles County Assessor's Office (Los Angeles International Airport) confirmed that these counties do not assess foreign-owned aircraft.

MFH:fr