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December 6, 2019

No. 2019/043

TO COUNTY ASSESSORS, COUNTY COUNSELS,
AND INTERESTED PARTIES:

Notice of Proposed Emergency Action and Finding of Emergency

**The State Board of Equalization Has Adopted California Code of Regulations, Title 18,
Section 202, *Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (BOE), pursuant to the authority vested in BOE by section 15606 of the Government Code and section 1157 of the Revenue and Taxation Code¹, has adopted California Code of Regulations, title 18, section (Rule) 202, *Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators*, as an emergency regulation in accordance with section 11346.1 of the Government Code, to be codified in division one of title 18 of the California Code of Regulations. Rule 202 implements, interprets, and makes specific the following: Revenue and Taxation Code sections 441, 1152, 1153.5, and 1157, as amended by Senate Bill No. 791 (SB 791).

FINDING OF EMERGENCY

Section 48 Statement

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Statement of Emergency

The Legislature has deemed the existence of an emergency by enacting section 1157 of the Revenue and Taxation Code, which states that “the board shall, by emergency regulation, promulgate regulations and produce forms and instructions necessary to implement the allocation formula . . .” and that “the adoption of the regulation is an emergency and shall be considered by

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

the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.” Section 8 of SB 791 further states that:

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the changes proposed by this act, which improve the certainty, accuracy, and efficiency of certificated aircraft assessment, are effective for the 2020-21 fiscal year, it is necessary that this act take effect immediately.

In addition, amended section 1152, subdivision (f) states that the section will become inoperative on January 1, 2020. (Sen. Bill No. 791 (2019-2020 Reg. Sess.) § 2.) Its replacement, the added section 1152 will simultaneously become operative on January 1, 2020. (Sen. Bill No. 791 (2019-2020 Reg. Sess.) § 3.) Thus, this emergency action is necessary to promulgate regulations and forms to enable the enforcement of the amended, enacted, and repealed statutes for the 2020-21 fiscal year.

AUTHORITY

Section 15606, Government Code; section 1157, Revenue and Taxation Code.

REFERENCE

Sections 441, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, Revenue and Taxation Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

Under article XIII, section 1 of the California Constitution, all property is taxable and assessed at fair market value, unless otherwise provided by the California Constitution or the laws of the United States. Section 2 of article XIII of the California Constitution authorizes the Legislature to provide for property taxation of tangible personal property. Certificated aircraft used by air carriers are tangible personal property, subject to taxation when in revenue service in the state of California.

Until December 31, 2016, the law specified an aircraft valuation methodology required to be used by assessors, which was based on the lowest of trended acquisition cost less depreciation; the wholesale price listed in the Airliner Price Guide, a commercially published value guide, less ten percent; or the original price paid. In addition, assessors and commercial air carriers used a “lead county” system of assessment, which streamlined the administrative procedures involved. This allowed commercial air carriers operating in multiple California counties to file a single consolidated property statement with a designated lead county assessor’s office. The lead county’s assessor’s office calculated the total unallocated fleet value of the air carrier’s certificated aircraft for each make, model, and series and transmitted the calculated fleet value to the other counties. To assess the aircraft, each county assessor’s office determined its allocated

portion of the calculated fleet value based on the flight data for its particular county. The allocation process limited each county's assessment to reflect the aircraft's physical presence in that county. However, this valuation methodology and the lead county system expired statutorily on December 31, 2016.

Due to the expiration of the mandatory valuation methodology and lead county system, county assessors were able to use any valid method (cost, income, comparable sales, published market value guides) to determine the fair market value of aircraft.

As related to the value allocation process, the law prior to approval of SB 791, required the BOE to designate a representative period of time to measure aircraft presence in California after consulting with assessors annually. Since 1997, the BOE has selected various weeks in the month of January to be the representative period. (See Rev. & Tax. Code, § 441, subd. (m).)

Effect, Objective, and Benefits of Emergency Regulation 202

The Legislature's adoption of SB 791 amended Revenue and Taxation Code section 441, amended and added section 1152, added sections 1153.5 and 1157, and repealed section 1153. Section 441 deals with the submission of property statements for taxable personal property (other than manufactured homes) having an aggregate cost of \$100,000. Subdivision (m) of section 441 deals with the property statements and schedule of certificated aircraft being filed with a lead county assessor's office. Subdivision (m) of section 441 previously expired on December 31, 2016. SB 791 removes this term of expiration as well as the requirement of a commercial air carrier to file a property statement electronically via the California Assessor's Standard Data Record network.

Section 1152 provides the allocation formula that each assessor would use in assessing the certificated aircraft. SB 791 limited the use of this allocation formula to fiscal years prior to 2020-21 and provides a new allocation formula for use for fiscal years 2020-21 and after. Section 1153 provides for the aforementioned representative periods. This section has been repealed by SB 791, thus removing BOE's requirement to annually choose a representative period.

SB 791 newly enacts section 1153.5, which re-establishes a lead county assessor's office and provides for its responsibilities.

SB 791 newly enacts section 1157, which directs the Board to, by emergency regulation, promulgate regulations and produce forms and instructions to implement the new allocation formula.

BOE has performed an evaluation of whether emergency Regulation 202 is inconsistent or incompatible with existing state regulations and determined that the emergency regulation is not inconsistent or incompatible with existing state regulations. This is because Rule 202 is the only regulation governing rules applicable to the property taxation of certificated aircraft. In addition, BOE has determined that there are no comparable federal regulations or statutes to emergency Regulation 202.

DOCUMENTS RELIED UPON

The BOE relied on its Legislative Enrolled Bill Analysis regarding SB 791, as well as SB 791 itself.

MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

Section 7 of SB 791 states that if the “Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.” Since SB 791 and its amendments, enactments, and repeals designate a lead county assessor and allocate new responsibilities, county assessor offices may be impacted and thus, the emergency regulation imposes a mandate on a local agency that is reimbursable.

EFFECTIVE PERIOD

Government Code section 11346.1, subdivision (e) provides that emergency regulations may remain in effect for 180 days from adoption. Therefore, Rule 202 shall be effective immediately upon filing with the Secretary of State and shall remain in effect for 180 days from that date, unless the BOE amends, renews, or repeals it before the expiration of the 180-day period.

CONTACT PERSONS

Questions regarding the substance of Rule 202 should be directed to Lawrence Lin, Tax Counsel, by telephone at 1-916-322-1982, by e-mail at Lawrence.Lin@boe.ca.gov, or by mail to State Board of Equalization, Attn: Lawrence Lin, MIC:121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121.

Sincerely,

/s/ Lawrence Lin for

Henry D. Nanjo
Chief Counsel/
Acting Chief, Board Proceedings

HDN:ll

Proposed Revisions to Property Tax Rule 202

Rule 202. Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators.

(a) AIR TAXIS. An aircraft whose owner on the lien date used it in scheduled air taxi service at any time during the ~~representative 12-month period~~ from January 1 through December 31 of the previous year immediately preceding the lien date ~~selected pursuant to subsection (f)~~, or which has been purchased for scheduled air taxi service but not yet put into such service and not yet used in any other service, is assessable under sections 1150 to ~~1156~~ 1157 of the Revenue and Taxation Code and not under Part 10, Division 1, or under other situs provisions of Part 2, Division 1, of the Revenue and Taxation Code.

(b) SITUS. Aircraft of United States registry operated by certificated air carriers (within the meaning of section 1150 of the Revenue and Taxation Code) or scheduled air taxis (within the meaning of subdivisions (a) and (b) of section 1154 of the Revenue and Taxation Code) and flown in intrastate, interstate, or foreign commerce shall be deemed to be situated only in those taxing agencies (within the meaning of section 404 of the Revenue and Taxation Code) in which the aircraft normally make physical contact. The physical contact must be intentional rather than by accident or as the result of an emergency, and it must involve embarking or disembarking of crew, passengers, or freight.

(1) Aircraft flying over the state without landing do not acquire situs for property tax purposes. Conversely, the situs of aircraft that depart from a taxing agency within the state, fly out of the state, and return to the same or another taxing agency within the state without landing outside the state is within the state's taxing jurisdiction throughout the flight.

(2) Situs for property tax purposes is not affected by the legal or commercial domicile of the operator of the aircraft, except that foreign-owned and-based aircraft operated solely in foreign commerce do not acquire a situs within the state for property tax purposes.

(c) ALLOCATION FORMULA. ~~The allocation formula to be used by each assessor is composed of two factors: (1) ground and flight time and (2) aircraft arrivals and departures.~~

~~— (1) The ground and flight time factor is the ratio of time allocable to an airport during a representative period to the total time during the representative period.~~

~~— (A) Time allocable to an airport is the amount of time a certificated aircraft (or scheduled air taxi) is on the ground at the airport, plus the portion of incoming and outgoing flight time computed pursuant to subsection (d). In computing the time allocable to the airport, the following shall be excluded: (1) all ground and flight time prior to the aircraft's first entry into the revenue service of the air carrier in control of the aircraft on the current lien date; and (2) all ground time in excess of 168 hours during each period the aircraft spent 720 or more consecutive hours on the ground.~~

~~— (B) Total time is the sum of the time allocable to the airport and the time allocable elsewhere during the representative period. In computing the total time, the following shall be excluded: (1) all ground and flight time prior to the aircraft's first entry into the revenue service of the air carrier in control of the aircraft on the current lien date. The ground and flight time factor shall be multiplied by 75 percent to obtain a weighted ground and flight time factor.~~

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~~(2) The aircraft arrivals and departures factor is the ratio of the number of arrivals at and departures from an airport during a representative period to the total number of arrivals at and departures from all airports during the representative period. This factor shall be multiplied by 25 percent to obtain a weighted arrivals and departures factor.~~

~~—(3) The weighted ground and flight time factor shall be added to the weighted arrivals and departures factor. The sum of the two weighted factors yields the allocation ratio to be applied to the full cash value of the aircraft to determine the full cash value allocable to the airport.~~

(c) ALLOCATION FORMULA. The allocation formula to be used by each assessor is the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent within the state during the 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date as compared to the total time during that 12-month period.

- (1) Time in the air consists of flight time and taxi time within California’s borders.
 - (A) Time in the air shall be based on the State Board of Equalization’s “California Standard Flight Times” table in the most recently published Letter To Assessors that address intrastate and interstate standard flight times.
 - (B) These standard times shall be multiplied by the number of departures to and from the airports listed in the Letter To Assessors.
- (2) Time on the ground is all time in the state that is not flight or taxi time.
 - (A) Time on the ground at each airport shall be reported on a summary basis by fleet type pursuant to subdivision (m) of Section 441.
 - (B) Time on ground allocated to heavy maintenance that requires a certificated aircraft or scheduled air taxi to be removed from revenue service shall be excluded.
 - i. An air carrier claiming such exclusion shall identify such maintenance and supply sufficient documentation that will enable the assessor to confirm the amount of time the aircraft was not in revenue service.
 - ii. Routine line maintenance that does not require removal from revenue service shall not be excluded from time allocable to the airport.
- (3) Time allocable to each airport is the amount of time a certificated aircraft or scheduled air taxi is on the ground at the airport computed pursuant to subdivision (c)(2), plus the portion of incoming and outgoing flight time computed pursuant to subdivision (c)(1).
- (4) All time, both in the air and on the ground, that certificated aircraft have spent within the state prior to the aircraft’s first entry into the revenue service of the air carrier in control of the aircraft on the current lien date shall be excluded from the time-in-state factor.

(d) ALLOCATION OF FLIGHT TIME. For aircraft flying from one California airport to another California airport, the flight time attributable to each airport is one-half the flight time between the airports. For aircraft arriving from an airport outside the state or leaving for an airport outside the state, the flight time from or to the state boundary shall be allocated to the California airport in which the aircraft first lands or last takes off, as the case may be. The flight time to the state boundary shall be computed as follows: (1) determine the mileage from the airport to the state boundary crossing point on a great circle flight to the first landing point outside the state; (2) divide this mileage by the total great circle mileage from the airport to the first landing point outside the state; (3) multiply this

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percentage by the total flight time from the airport to the first landing point outside the state. The same procedure shall be used for inbound flights from outside the state. To allow for differences in take-off, landing, and cruising speeds and for varying take-off and landing patterns, the time allocated to an airport shall not be less than five minutes for an incoming or an outgoing flight. In lieu of the actual flight time for a single flight, the average flight time between two ports, or between a port and the state line, for two or more flights of a single carrier or of more than one carrier shall be used when such an average is promulgated by the board unless the assessor has documented evidence which justifies departure from such average time.

(e) SOURCES OF ALLOCATION DATA. ~~For scheduled operations, arrivals and departures and ground and flight time shall be derived from the carrier's operating schedules.~~ For all nonscheduled operations, including, but not limited to, overhaul, pilot training, charter, military contract flights, and standby services, ground time and departures shall be derived from the carrier's recorded operations.

(f) REPRESENTATIVE PERIOD. ~~Annually, on or before December 20, the board shall consult with the assessors of the counties in which air carriers' aircraft normally make physical contact. On or before January 15, the board shall designate a representative period to be used by all assessors in assessing the aircraft of each carrier for the forthcoming fiscal year.~~

(f) LEAD COUNTY ASSESSOR'S OFFICE.

- (1) After consulting with commercial air carriers in the state, the Aircraft Advisory Subcommittee of the California Assessors' Association shall designate a lead county assessor's office for each commercial air carrier operating certificated aircraft in California.
 - (A) Such designation shall occur on or before March 1, 2020 and on or before each March 1 thereafter.
 - (B) Every third year thereafter, redesignate a lead county assessor's office for each of these air carriers, unless an air carrier and its existing lead county assessor's office concur to waive this redesignation.
- (2) The lead county assessor's office shall do all of the following:
 - (A) Calculate an unallocated value of the certificated aircraft of each commercial air carrier to which that assessor is designated.
 - (B) Electronically transmit to the assessor of each county in which the property described in paragraph (1) has situs for the assessment year the values determined by the lead county assessor's office under paragraph (1).
 - (C) Receive the property statement, as described in subdivision (m) of Section 441, of each commercial air carrier to which the assessor is designated.
 - (D) Receive and electronically transmit to the assessor of each affected county flight data received pursuant to paragraph (3) of subdivision (m) of Section 441.
 - (E) Lead the audit team described in subdivision (f)(4) of this rule when that team is conducting an audit of a commercial air carrier to which the assessor is designated.
 - (F) Notify, in writing, each commercial air carrier for which the assessor has been designated of this designation on or before the first March 15 that follows that designation.
- (3) The county assessor of each county in which the personal property of a commercial air carrier has situs for an assessment year is solely responsible for assessing that property, applying the allocation formula set forth above and enrolling the value of the property in that county, but,

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in determining the allocated fleet value for each make, model, and series of certificated aircraft of a commercial air carrier, the assessor may consult with the lead county assessor's office designated for that commercial carrier.

(4) An audit of a commercial air carrier shall be conducted once every four years on a centralized basis by an audit team of auditor-appraisers from one to three counties, as determined by the Aircraft Advisory Subcommittee of the California Assessors' Association. Such audit shall encompass all of the California Personal Property and fixtures of the air carrier and is deemed to be made on behalf of each county for which an audit would otherwise be required under Section 469.

(A) The audit team shall be the point of contact for all aircraft-related questions to or from each county and the commercial air carrier.

(B) The audit team shall also ensure that all aircraft-related concerns regarding the taxable value of the aircraft and aircraft parts are resolved with each county before finalizing the audit.

(g) APPLICATION OF ALLOCATION FORMULA. The aircraft of certificated air carriers and scheduled air taxi operators shall be segregated by subfleet type, and a separate allocation ratio shall be computed for each subfleet type which has established a taxable situs within the state, excluding those makes within a type which have not established a taxable situs within the state. Each allocation ratio shall then be applied to the total value of the carrier's aircraft of each subfleet type to which the allocation ratio applies., ~~excluding those makes within a type which have not established a tax situs within the state.~~ Annually, the types shall be designated by the board in the same manner and at the same time the representative period is designated. Examples of the types are as follows:

- (1) ~~Piston-powered~~
- (2) ~~Turboprop-powered~~
- (3) ~~Helicopter~~
- (4) ~~Turbojet and Turbofan-powered~~
- (A) ~~Two engine~~
- (B) ~~Three engine~~
- (C) ~~Four engine~~
- (D) ~~DC-8-60 series~~
- (E) ~~Two engine widebody~~
- (F) ~~Three engine widebody~~
- (G) ~~Four engine widebody~~

Authority: Section 15606, Government Code.

Reference: Sections 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, Revenue and Taxation Code.