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September 25, 2003

The Honorable Carol Migden
Chairwoman
State Board of Equalization
465 California St., Suite 830
San Francisco, CA 94104-1820

Subject: California Assessors' Association Petition for Revision of
State Board of Equalization Rule 138

Dear Chairwoman Migden:

The California Assessors' Association ("CAA") formally petitions the State Board of Equalization to amend State Board Rule 138 as authorized by Government Code section 11340.6. Attached to this cover letter are proposed rule revisions and a justification statement with attachments to more fully explain the legal and factual basis for the CAA proposals. The CAA is always available to meet with the Property Tax Committee Chairperson to further discuss the proposed rule amendments.

Please feel free to contact me or any of the other members of the CAA Executive Board if you have any questions regarding these petitions for rule revision.

Sincerely,

Joan Thayer
President, California Assessors' Association

cc: The Honorable Steve Westley, Controller
The Honorable Bill Leonard, State Board, District 2
The Honorable Claude Parrish, State Board, District 3
The Honorable John Chiang, State Board, District 4
Members, California Assessors Association
Mr. Tim Boyer, Interim Executive Director
Ms. Jean Ogrod, Interim Chief Counsel
Mr. David Gau, Deputy Director, Property Taxes Department

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CALIFORNIA ASSESSORS' ASSOCIATION
PROPOSED RULE CHANGE

**RULE 138. EXEMPTION FOR AIRCRAFT BEING REPAIRED,
OVERHAULED, MODIFIED OR SERVICED**

- (a) No Change
- (b) **QUALIFYING CERTIFICATED AIRCRAFT.** Aircraft that qualify for exemption include certificated aircraft that have been taken out of revenue service by an air carrier:
 - (1) for the purpose of being repaired, overhauled, modified, or serviced; and,
 - (2) with an executed contract or a specific written plan for the purposes described in subsection (b)(1).

~~Aircraft in California solely for the purposes described in subsection (b)(1) include any incidental and attendant storage.~~

Aircraft in California primarily for the purpose of storage may require incidental maintenance or servicing related to storage. Such aircraft do not qualify for the exemption.

- (c) No Change
- (d) No Change
- (e) No Change

CALIFORNIA ASSESSOR'S ASSOCIATION

RULE 138. EXEMPTION FOR AIRCRAFT BEING REPAIRED, OVERHAULED, MODIFIED OR SERVICED

Justification for Rule Revision

The purpose of Property Tax Rules is to clarify existing statutes and, thus, ensure conformity amongst the 58 counties in assessment practices. Property Tax Rules must not change or add to existing law as we believe Property Tax Rule 138 has clearly done.

Property Tax Rule 138 was written to clarify Section 220 of the Revenue and Taxation Code, which states:

“Any aircraft, 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. This exemption does not apply to aircraft normally based in California, or operated intrastate or interstate in and into California.”

As a result of the economic downturn in the airline industry in the wake of 9/11, hundreds of commercial aircraft were taken out of service and stored in California. The airline industry sought to have these aircraft exempted from personal property taxation under Section 220 of the Revenue and Taxation Code.

Assessors denied the request for exemption since the aircraft were not present in California **solely** for the purposes of service, modification or repair but, instead, were being stored on a temporary basis pending an upturn in economic conditions. Any servicing of the airplanes while being stored was minimal and incidental to their primary reason for being taken out of service.

The airline industry turned to the BOE for help, resulting in Rule 138 (Attachment #1), which “clarified” the meaning of Section 220. The assessors’ concern with Rule 138 is in the last sentence of paragraph (b):

“Aircraft in California solely for the purposes described in subsection (b)(1) include any incidental and attendant storage.”

Clearly, Rule 138 exempts personal property not referenced in Section 220. Whether one believes that stored aircraft should be taxed is not relevant to this situation. Current law does not exempt stored aircraft. Rule 138, therefore, is legislative in its application.

The California Assessor’s Association believes the language and intent of Section 220 is clear and no clarifying Property Tax Rule should be necessary. If, however, the BOE believes a rule is necessary to address the taxation of stored aircraft, we would propose that Property Tax Rule 138, Section (b) be amended to read:

“Aircraft in California primarily for the purpose of storage may require incidental maintenance or servicing related to storage. Such aircraft do not qualify for the exemption.”