

Paul Bancroft, Partner
pbancroft@mcdonaldcarano.com

Reply to: Reno

Joshua J. Hicks, Partner
jhicks@mcdonaldcarano.com

MEMORANDUM

TO: Jeff Mitchell

FROM: Paul Bancroft and Joshua J. Hicks

DATE: September 11, 2020

RE: Migratory Property for LCB File No. R001-20

Migratory Property

County assessors have authority to prorate the taxes assessed on property that will not remain in the State for the full fiscal year. See NRS 361.505. Subsection 4 of Section 19 limits this authority. Therefore, subsection 4 of Section 19 should be amended as follows:

4. The entire amount of the taxable value of an aircraft that is allocated to this State must be apportioned to the county in this State in which the aircraft is present for the majority of the total amount of the aircraft's ground time in this State during the fiscal year for which the aircraft is being assessed. [~~The aircraft must be assessed by that county for a full fiscal year and, if the aircraft is removed from that county before the end of a fiscal year, the taxes imposed on that aircraft may not be prorated.~~].

Paul Bancroft, Partner
pbancroft@mcdonaldcarano.com

Reply to: Reno

Joshua J. Hicks, Partner
jhicks@mcdonaldcarano.com

MEMORANDUM

TO: Jeff Mitchell

FROM: Paul Bancroft and Joshua J. Hicks

DATE: September 11, 2020

RE: Formula for Allocating Taxable Value for LCB File No. R001-20

The Formula for Allocating Taxable Value

Under Section 19 of LCB File No. R001-20 (February 4, 2020), if an aircraft has taxable situs in Nevada and in another state or country the taxable value of the aircraft in the current fiscal year is allocated based on a formula which uses information on the use of the aircraft during the preceding fiscal year. In describing the formula subsection 2 reads, in part, as follows:

...The portion of the taxable value of the aircraft allocated to this State must equal the amount determined by multiplying:

- (a) The taxable value of the aircraft; and
- (b) The fraction obtained by dividing the number of overnights spent in this State and the total number of days in the immediately preceding fiscal year.

The wording of this formula raises two issues.

First, a fraction is usually described as dividing a numerator **by** a denominator. In subsection 2(b) it is described as dividing a numerator **and** a denominator. I'd recommend that the word "by" be substituted for the word "and".

Second, this formula produces a reasonable result as long as the taxpayer owned the aircraft for the entire preceding fiscal year. However, the formula produces a skewed result if the taxpayer only owned the aircraft for a portion of the preceding fiscal year.

These issues can be remedied by changing subsection 2b) to read as follows:

mcdonaldcarano.com

100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000
2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100

...The portion of the taxable value of the aircraft allocated to this State must equal the amount determined by multiplying:

(a) The taxable value of the aircraft; and

(b) The fraction obtained by dividing the number of overnights spent in this State *by* ~~and~~ the total number of days *the aircraft was owned by the taxpayer* in the immediately preceding fiscal year.



Paul Bancroft, Partner
pbancroft@mcdonaldcarano.com

Reply to: Reno

Joshua J. Hicks, Partner
jhicks@mcdonaldcarano.com

MEMORANDUM

TO: Jeff Mitchell
FROM: Paul Bancroft and Joshua J. Hicks
DATE: September 11, 2020
RE: Definition of “Taxable Situs” for LCB File No. R001-20

Definition of the term “Taxable Situs”

The definition of “taxable situs” in Section 10 of LCB File No. R001-20 reads as follows:

“Taxable situs” means contacts sufficient to confer on this State the power to tax an aircraft under the United States Constitution.

This definition limits the term to situations where the contacts are sufficient to confer “on this State” the power to tax “under the United States Constitution.” In other words, the term “taxable situs” is defined to mean contacts sufficient to allow Nevada to assess a tax.

As defined the term cannot be used to identify the contacts with another state or foreign country, which would confer on it the power to tax. This creates a problem in Section 18 where the taxpayer has the burden of proving that “the aircraft has taxable situs in another state or country.”

The problem can be remedied by changing the definition in section 10 to read as follows:

“Taxable situs” means contacts sufficient to confer on *a [this] State or foreign country* the power to tax an aircraft [~~under the United States Constitution~~].

Or, it can be remedied by returning to the definition of “taxable situs” in the Section 21 of Agency Draft VI (November 14, 2019), which read as follows:

“Taxable situs” means the location or locations where an aircraft has received opportunities, benefits and protection from a jurisdiction sufficient to confer the power to tax at that location or locations.

Paul Bancroft, Partner
pbancroft@mcdonaldcarano.com

Reply to: Reno

Joshua J. Hicks, Partner
jhicks@mcdonaldcarano.com

MEMORANDUM

TO: Jeff Mitchell

FROM: Paul Bancroft and Joshua J. Hicks

DATE: September 11, 2020

RE: Evidence of Taxable Situs for LCB File No. R001-20

Evidence of Taxable Situs

In the initial year in which a request for allocation is made by a taxpayer, the Assessors have requested various documents to ensure the aircraft has established a tax situs in another state or country. But, in subsequent years, filing the taxpayer's flight logs has been sufficient. It is our understanding that the present regulation is not intended to change the existing practice and, therefore, we believe it should be amended to more closely reflect current practice.

In addition, under the Taxpayers' Bill of Rights a taxpayer has the right "to provide the minimum documentation" as may be reasonably required. See NRS 360.291(1)(c).

For the foregoing reasons we suggest subsections 2 and 3 of Section 18 of LCB File No. R001-20 (February 4, 2020) be amended as follows:

2. To make a claim pursuant to subsection 1, the owner of the aircraft must submit to the county assessor sufficient information to determine whether the aircraft has taxable situs in this State and in another state or country, *which may include* ~~[including]~~, without limitation:
 - (a) Records kept in the normal course of business that indicate the locations to which the aircraft has traveled, the length of time the aircraft remained at those locations ~~[and the purpose of the travel to those locations, including, without limitation]~~, *such as* mileage, flight or maintenance logs or tie-down receipts;
 - (b) Actual tax bills or notices of appraisal or assessment from another jurisdiction; or

(c) Reports filed with state or federal governmental agencies that indicate the locations to which the aircraft has traveled, the length of time the aircraft remained at those locations and the purpose of the travel to those locations.

3. To determine the taxable situs of an aircraft, a county assessor may request documentation indicating *the reason the aircraft has traveled to various locations* or the domicile of the owner of the aircraft, if such information is relevant to determining the nature of the physical presence of the aircraft in *a state or country* [~~this State~~] and the intent of the owner in causing the aircraft to have a physical presence in *a state or country* [~~this State~~]. Such documentation may include...

