

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
GEO G2 SOLUTIONS INC. ) Account Number SP H UT 84-121987  
Petitioner ) Case ID 563641  
Los Altos, Santa Clara County

Type of Transaction: Purchase of aircraft  
Date of Purchase: 05/09/08

<u>Item</u>	<u>Disputed Amount</u>
Purchase of aircraft subject to use tax	\$1,030,000
Tax as determined and protested	\$ 84,975.00
Interest through 05/31/14	<u>20,704.80<sup>1</sup></u>
Total tax and interest	<u>\$105,679.80</u>
Monthly interest beginning 06/01/14	<u>\$ 424.88</u>

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner owes use tax on its storage, use, or other consumption of the aircraft in California. We find petitioner owes use tax.

Petitioner operates a business that provides aerial photography and imaging services for the agriculture industry. Petitioner purchased the aircraft at issue on May 9, 2008, and it took delivery of the aircraft in Indiana. Thus, the sale took place outside California, and, if any tax is due, it is use tax owed by petitioner.

According to petitioner, the aircraft was flown, on the day after purchase, from Indiana to Moffett Federal Airfield (Moffett Field), a former naval air station located in California. Moffett field is currently operated by the National Aviation and Space Administration Ames Research Center (ARC), a department of the federal government, and it is undisputed that Moffett Field is a federal government enclave (also known as a federal area), where some state laws may not apply unless

<sup>1</sup> The amount of interest, \$20,704.80, is net of \$9,744.78, the amount of interest we have computed for the periods August 4, 2010 through January 4, 2011, and from March 11, 2011 through June 27, 2012, for which we have recommended relief.

1 Congress passes a statute or the federal courts determine that such state laws do not infringe on the  
2 enumerated powers of the federal government under the United States Constitution.

3 The Sales and Use Tax Department (Department) received information from the Federal  
4 Aviation Administration regarding petitioner's purchase of the aircraft, and it sent petitioner a  
5 Combined State and Local Consumer Use Tax Return for Aircraft. Petitioner filed the return, claiming  
6 no use tax is due because the aircraft is located in Moffett Field, a federal enclave in which petitioner  
7 asserts that California may not collect use tax. The Department investigated this matter and found that  
8 petitioner's business was located in Santa Clara County, California, including at Moffett Field, and that  
9 petitioner used the aircraft in the operation of the business. The Department concluded that petitioner  
10 had purchased the aircraft for use in California, and that the purchase was subject to use tax, and it  
11 issued the Notice of Determination in dispute.

12 Petitioner states that the aircraft has been stored and used at Moffett Field to fulfill a contract  
13 with ARC to provide aerial photographs. Petitioner contends that it is not liable for use tax because the  
14 Board is preempted from collecting tax for activities conducted at Moffett Field due to Moffett Field's  
15 status as a federal enclave. In support, petitioner has provided a copy of an agreement between it and  
16 ARC, which indicates that ARC hired petitioner to provide high resolution multi-spectral digital aerial  
17 images to assist ARC's agricultural and natural resource clients. Petitioner states that the aircraft  
18 generally flies in federal airspace at an average cruising altitude of 28,000 feet. It further asserts that,  
19 during the six months following the aircraft's entry into California, the aircraft was returned to Moffett  
20 Field after each flight.

21 Petitioner notes that Moffett Field was established as a federal enclave by an Act of Congress  
22 in 1931 and that California did not enact the use tax until 1935. Therefore, petitioner argues that the  
23 Board lacks the jurisdiction to collect use tax on petitioner's storage and use of the aircraft in Moffett  
24 Field. In support, petitioner cites *Pacific Coast Dairy, Inc. v. Department of Agriculture* (1943) 318  
25 U.S. 285, 296 (*Pacific Coast Dairy*). Petitioner also relies on a federal Attorney General's Opinion  
26 dated December 9, 1947, which found that an officer on active duty with the United States Army did  
27 not owe tax to Wyoming for a vehicle that he purchased in Colorado but drove into Wyoming the same  
28 day. Further, petitioner argues that, because it uses the aircraft under its contract with ARC, the

1 aircraft qualifies as a federal instrumentality and thus is exempt from California use tax under the  
2 United States Constitution.

3 It is undisputed that petitioner purchased and first functionally used the aircraft outside  
4 California but took the aircraft to Moffett Field the day after purchase and then stored the aircraft at  
5 Moffett Field continuously when it was not otherwise in use. Thus, the aircraft is regarded as having  
6 been purchased for use in California. We reject petitioner's assertion that no tax is owed because the  
7 aircraft has been stored at a federal enclave since its first entry into California, because tax applies to  
8 the use of tangible personal property on federal areas to the same extent that it applies with respect to  
9 the use of property elsewhere in California. (Cal. Code Regs. tit. 18, § 1616, subd. (a).) The Buck  
10 Act, which was passed by Congress in 1947, provided explicit authority for California to tax the sale of  
11 an aircraft that is purchased and first functionally used out of state and is thereafter brought to  
12 California by the purchaser for use in this state.<sup>2</sup> Although petitioner asserts that the Buck Act does  
13 not apply in this case, it has provided no authority to support that argument. We find petitioner's  
14 reliance on *Pacific Coast Dairy* to be misplaced since that case involved a license revocation, which is  
15 clearly distinct from the issue here, the imposition of state tax. We also reject any reliance on the  
16 Attorney General's Opinion dated December 9, 1947, because the finding in that case was based on the  
17 Servicemembers Civil Relief Act, which is not relevant here since petitioner is not a service member.  
18 As for petitioner's argument that the aircraft qualifies as a federal instrumentality, there is no dispute  
19 that petitioner, not the United States (including ARC) purchased and owns the aircraft, and petitioner  
20 conceded at the appeals conference that the United States does not hold any equity or ownership  
21 interest in petitioner itself. We know of no authority, and petitioner has provided none, that renders an  
22 item of property a federal instrumentality simply because it is used in the performance of a contract  
23 with a federal agency, even if the use of that property furthers some federal purpose. Accordingly, we  
24 find that petitioner purchased the aircraft for storage or use in California, and the use tax applies.

25  
26  
27  
28 <sup>2</sup> The Buck Act did include an exception with respect to sales or use of property that occurred prior to January 1, 1941, but that exception is not applicable here.

**OTHER MATTERS**

We have reviewed the procedural history of the appeal and note that a period of 21 months elapsed from the date petitioner filed its tax return (3/31/09) in connection with this transaction to the date on which a Notice of Determination (NOD) was issued (1/6/11); and a period of 28 months elapsed from the date of the NOD to the date of the appeals conference (5/2/13). Our review indicates consistent and continuous activity by Department personnel during these time periods, with two exceptions. First, during the 11-month period from February 2, 2010 to January 4, 2011, there is an absence of activity and no response to documentation that petitioner previously submitted. The Department explains that the employee assigned to the matter left and the matter had to be reassigned, but that it still took five months longer than expected to process the information. Second, during the period from March 11, 2011 through June 27, 2012, we note an unexplained absence of activity on this appeal. We find that the foregoing periods constitute unreasonable delays and we recommend relief of interest from August 4, 2010 through January 4, 2011, and from March 11, 2011 through June 27, 2012. We compute interest of \$9,744.78 for those two periods combined.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III