

**CALIFORNIA STATE BOARD OF EQUALIZATION**

**APPEALS DIVISION FINAL ACTION SUMMARY**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
MARK J. WEIDHAAS and RICHARD A. WEINER )  
Petitioner )

Account Number SP H UT 84-149199  
Case ID 577043  
Temecula, Riverside County

Type of Transaction: Purchase of aircraft

Date of Purchase: 09/10/10

Since we have now concluded that petitioner’s use of the aircraft qualifies for the interstate commerce exclusion, there is no longer any amount in dispute.

Tax as determined	\$33,250.00
Post Board hearing adjustment	- 33,250.00
Total	<u>\$ 00.00</u>

The Board held the hearing in this appeal on November 19, 2013 and allowed 30 days for petitioner to provide additional records and the Sales and Use Tax Department (Department) 30 days to provide a response. Based upon petitioner’s submission and the Department’s response, we now find that petitioner’s use of the aircraft qualifies for the interstate commerce exclusion, and we recommend that the petition be granted. Since we have reversed our position based on the additional evidence and testimony, the final action summary below does not incorporate any of the Board hearing summary. However, for historical reference, we have included the Board hearing summary after the final action summary.

**RESOLVED ISSUE**

The issue in this appeal is whether petitioner has established that it principally used the aircraft in interstate commerce during the six-month period following the aircraft’s first entry into California. Prior to the Board hearing, we concluded that it had not. At the hearing, the Board’s discussion focused on two specific issues: 1) whether petitioner’s “Flight Log Summaries” represent an accurate record of all flight activities of the aircraft during the test period; and 2) whether the interstate flights petitioner made were actually for commercial purposes. Based on its review of the evidence after the

1 Board hearing, the Department concluded that the flight log substantially accounts for all of the  
2 aircraft's flight hours during the test period, totaling 35.6 hours. However, the Department continued  
3 to find there was insufficient evidence to show that a majority of those hours represented flights in  
4 interstate commerce. We disagree.

5 As support for its assertion that the majority of its use of the aircraft was in interstate  
6 commerce, petitioner has provided three statements from third parties. We first note that we have  
7 some uncertainty about the reliability of the statements. One of them is a statement by petitioner's  
8 partners' flight instructor, who was not a party to any of the commercial activities at the destinations of  
9 the flights he describes. Also, none of the statements are signed under penalty of perjury. Further, we  
10 note that there is no objective evidence of the commercial use of the aircraft, such as depreciation of  
11 the aircraft or expenses claimed by petitioner in connection with the aircraft or the alleged business  
12 meetings.

13 However, despite our misgivings, we note that the two statements from individuals who  
14 apparently attended business meetings with petitioner are not controverted. Also, while we are not  
15 persuaded by the statement by petitioner's partners' flight instructor, we note that there is other  
16 evidence that the 6.5 hours of interstate flight time he described appears to be commercial use of the  
17 aircraft. Specifically, those flight hours consist of three separate flights, from California to locations in  
18 two different states, all in one day. It appears more likely than not that such a flight pattern is  
19 consistent with commercial, rather than personal, purposes. Accordingly, while the matter is not free  
20 from doubt, we find that the preponderance of the evidence shows that 54.77 percent (19.5 of the 35.6  
21 flight hours) of the flight hours during the test period qualify as interstate commerce flights.  
22 Therefore, we find that petitioner's use of the aircraft qualifies for the interstate commerce exclusion,  
23 and we recommend that the petition be granted.

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25 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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**--BOARD HEARING SUMMARY--****UNRESOLVED ISSUE**

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3 **Issue:** Whether petitioner's purchase and use of an aircraft is subject to use tax. We find the  
4 purchase is subject to use tax.

5 Petitioner purchased an aircraft from a seller in Pennsylvania who did not and was not required  
6 to hold a California seller's permit. Petitioner took delivery of the aircraft in Pennsylvania, and, on the  
7 day after purchase, flew to another point in Pennsylvania and picked up a passenger for a flight to  
8 Missouri. Later that day, petitioner flew the aircraft to California.

9 When the Sales and Use Tax Department (Department) became aware of petitioner's aircraft  
10 purchase, it sent petitioner a return to report its purchase. Petitioner filed the return identifying a  
11 purchase price of \$380,000 but claiming that the transaction was exempt from tax because the aircraft  
12 was purchased for use and was used in interstate commerce. The Department requested evidence to  
13 support the claimed exemption, but petitioner did not respond. The Department then issued the Notice  
14 of Determination in dispute.

15 Petitioner contends that the partners, who are both medical doctors, licensed pilots, and  
16 members of Innovative Pain Treatment Solutions, LLC (IPTS), purchased the aircraft to further the  
17 business purposes of IPTS. Petitioner asserts it used the aircraft solely for business purposes, it did not  
18 purchase the aircraft for personal use, and one-half or more of the flight time traveled by the aircraft  
19 during the six-month period immediately following its entry into California (September 11, 2010,  
20 through March 11, 2011) was commercial flight time traveled in interstate or foreign commerce. As  
21 evidence, petitioner has provided various types of evidence, as detailed in the D&R. The evidence is  
22 sufficient to establish that the aircraft was delivered to petitioner and first functionally used outside  
23 California, and the aircraft was brought into California the day after it was delivered to petitioner. To  
24 document that the aircraft was purchased for interstate commerce, petitioner provided a flight log  
25 summary, an Excel spreadsheet of flights based on the flight-log summary, and documents entitled  
26 "Trip Notes Innovative Pain Treatment Solutions, LLC," signed under penalty of perjury by one or  
27 both of the partners, for all out-of-state flights listed in the flight log summary from September 11,  
28 2010, through February 24, 2011. Relying on these documents, petitioner asserts that the aircraft was

1 flown 35.6 Hobbs hours during the six months immediately following its entry into California and that  
2 29.5 of those hours (about 83 percent) were flights in interstate commerce.

3         Since the aircraft was delivered to petitioner and the aircraft was first functionally used outside  
4 California and was brought into California the day after delivery, and both partners are California  
5 residents, it is rebuttably presumed that the aircraft was acquired for storage, use, or other consumption  
6 in this state. (Rev. & Tax. Code, § 6248, subds. (a)(1)-(4).) With respect to petitioner's assertion that  
7 one-half or more of the flight time traveled by the aircraft during the six-month period immediately  
8 following its entry into California was commercial flight time traveled in interstate commerce, it is  
9 undisputed that the flight log was not completed contemporaneously with the flights. In addition to the  
10 fact that the flight log was apparently completed from memory, and thus could easily be incomplete,  
11 there is no evidence of the Hobbs hours shown on the aircraft at the time of entry into California or at  
12 the end of the six-month test period, and, without knowing the total hours flown during the test period,  
13 the percentage of flight time travelled in interstate commerce cannot be computed. Also, the  
14 FlightAware printouts provided by petitioner as objective secondary support of the flight log do not  
15 include all of the flights on the flight log. Notably, the FlightAware printouts do not include flights  
16 that represent 5.8 of the 6.1 Hobbs hours of intrastate flight time shown on petitioner's flight log.  
17 Since petitioners' own submissions show that the printouts do not account for all of petitioners' flights,  
18 the printouts are unreliable. In addition, the flight log shows only 4.7 of flight hours for training  
19 although petitioner's insurance required a combined 45 hours of flight training before either partner  
20 flew solo. Thus, it appears that several training flights (which most likely would have been intrastate  
21 flights) have been excluded from the flight log. Petitioner asserts that the absence of 40.3 hours of  
22 flight training on the flight log is not evidence that the flight log is incomplete because the partners  
23 could have rented another airplane for training. However, petitioner has provided no evidence of such  
24 rental. Thus, we find that the flight log is not credible evidence of the actual use of the aircraft during  
25 the six-month test period, and we are not convinced that one-half or more of the flight time was in  
26 interstate flights. Moreover, the only evidence to show that the flights were for commercial, rather  
27 than personal, use is the Trip Notes containing declarations signed by petitioner's partners. However,  
28 its partners' declarations alone, without any corroborating evidence, are not sufficient reliable evidence

1 of a commercial purpose. Because of the lack of corroborating evidence, we are not persuaded that  
2 these flights had a commercial purpose.

3 Thus, we find that petitioner has not provided evidence that the aircraft was principally used in  
4 interstate travel or that the travel was for business purposes. We also find irrelevant petitioner's  
5 assertion that the Department has not provided any evidence that the flight log summary does not  
6 contain all the flights taken during the test period. It is petitioner's burden, not the Department's, to  
7 show that flight log summary contains all the flights taken during the test period, which petitioner has  
8 failed to do. Accordingly, we find that petitioner has not provided evidence sufficient to show that its  
9 purchase and use of the aircraft was exempt from use tax.

10 **OTHER MATTERS**

11 None.

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

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