

**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: )  
AIRCRAFT CHARTER AND LEASING, LLC ) Account Number SP H UT 84-114947  
Petitioner ) Case ID 496438  
Minden, Nevada )

Type of Transaction: Purchase of aircraft  
Date of Purchase: 12/02/05

<u>Item</u>	<u>Disputed Amount</u>		
Purchase of aircraft	\$337,335		
		<u>Tax</u>	<u>Penalty</u>
As determined		\$27,830.00	\$2,783.00
Post-D&R adjustment		<u>00.00</u>	<u>- 2,783.00</u>
Proposed redetermination, protested		<u>\$27,830.00</u>	<u>\$ 00.00</u>
Proposed tax redetermination		\$27,830.00	
Interest through 09/30/12		<u>12,414.98</u>	
Total tax and interest		\$40,244.98	
Payments		<u>- 17,000.00</u>	
Balance Due		<u>\$23,244.98</u>	
Monthly interest beginning 10/01/12		<u>\$ 54.15</u>	

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner has established that its purchase and use of the aircraft was nontaxable. We find petitioner has not.

Petitioner, a Nevada limited liability company, purchased the aircraft in Concord, California from a private organization that was not required to hold a California seller's permit. After taking possession of the aircraft in California, petitioner used the aircraft in this state for the purpose of performing test flights, and the aircraft remains in California.

The Sales and Use Tax Department (Department) concluded that petitioner's purchase and use of the aircraft was subject to tax. Petitioner contends that the purchase and use of the aircraft was not subject to tax because petitioner intended to move the aircraft to Oregon and lease it there. However,

1 petitioner states it was unable to implement that plan because of continuous major repair problems.  
2 Petitioner asserts that, although it was able to use the aircraft for test flights, it was never able to  
3 resolve various problems, such that the aircraft could be used for flight instruction. Meanwhile, the  
4 tentative lessee in Oregon backed out of its agreement, the value of the aircraft dropped sharply, and  
5 petitioner concluded it was not worth the expense to fix it. As a result, petitioner states that the aircraft  
6 is currently grounded in Concord. Petitioner states that it did not advertise the aircraft for sale because  
7 it has never been in a saleable condition and that it did not depreciate the aircraft on its income tax  
8 returns because it was never placed in service by petitioner.

9 Petitioner purchased and took possession of the aircraft in California, flew the aircraft in  
10 California, and the aircraft never left California. Since the storage and use of the aircraft in this state is  
11 not exempt from tax, we conclude that petitioner's purchase and use of the aircraft is subject to use tax.

#### 12 **RESOLVED ISSUE**

13 Since petitioner did not file a return to report the purchase of this aircraft, the determination  
14 included a failure-to-file penalty, and petitioner has requested relief. Petitioner asserts that it never  
15 received the return sent by the Department and that it was unaware of the requirement to file a return.  
16 We find that petitioner had a good faith, albeit erroneous, belief that the purchase and use of the  
17 aircraft was not subject to tax. Accordingly, we find petitioner's failure to file a return was due to  
18 reasonable cause, and we recommend relief of the failure-to-file penalty.

#### 19 **OTHER MATTERS**

20 None.

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