

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination )  
 4 Under the Sales and Use Tax Law of: ) Account Number: SP I UT 84-112419  
 ) Case ID 450134  
 5 MARY BUNTZ STEEL )  
 6 Petitioner ) Castro Valley, Alameda County  
 )

7 Type of Transaction: Purchase of aircraft

8 Purchase Date: 2/2/06

9 Item Measure in Dispute

10 Purchase of aircraft \$69,000

11 Tax as determined and protested \$5,349.00

12 Proposed tax redetermination \$5,349.00

Interest through 9/30/10 1,662.62

13 Total tax and interest \$7,011.62

14 Monthly interest beginning 10/1/10 \$31.20

## 15 UNRESOLVED ISSUE

16 **Issue:** Whether the subject aircraft was purchased for use in California. We conclude that it  
 17 was.

18 The Sales and Use Tax Department (Department) sent petitioner a combined State and Local  
 19 Consumer Use Tax Return for Aircraft based on the Alameda County property tax roll for 2007, which  
 20 indicates that petitioner was the registered owner of the subject aircraft and that the aircraft was located  
 21 at the Livermore Municipal Airport in Livermore, California, during 2007. Petitioner filed the  
 22 completed return, claiming that the aircraft had been purchased for \$0 and that it had not been  
 23 purchased for use in California, but did not provide any supporting documents. Petitioner  
 24 subsequently provided information showing that the aircraft was purchased on February 2, 2006, for  
 25 \$69,000, with delivery by the seller in Kansas to a pilot hired by petitioner, who flew the aircraft to  
 26 Klamath Falls, Oregon. Since the sale and purchase occurred outside California, the applicable tax, if  
 27 any, is use tax for which petitioner, as the purchaser, is liable. There is no dispute that at the time  
 28 petitioner purchased the aircraft she was living in Oregon, where she had lived for approximately six

1 months, nor that petitioner is currently a California resident. There is a dispute, however, as to  
2 whether petitioner was a California resident at the time she purchased the aircraft, even though she was  
3 living in Oregon at the time. The Department found that petitioner owned a house in Castro Valley,  
4 California, at which she was identified as a resident from at least April 1998 through June 2008. Also,  
5 petitioner asserted in a letter dated March 10, 2008, that the aircraft was hangared at the Livermore  
6 Airport beginning June 25, 2006. Based on this information, the Department concluded that petitioner  
7 purchased the aircraft for use in this state, and that use tax applies.

8 In later correspondence, petitioner claimed that she brought the aircraft to California in July  
9 2006, only for purpose of repair, retrofit, or modification. In response to the Department's request for  
10 evidence to support this contention, petitioner stated that the aircraft first entered California on July 4,  
11 2006, which contradicted her previous statement that the aircraft was hangared at Livermore Municipal  
12 Airport beginning June 25, 2006. Petitioner also claimed that the aircraft was "totaled" on July 4,  
13 2006, in a crash that occurred near Jackson, California. As support, she provided a Policyholder  
14 Release signed by her, on October 10, 2006, indicating that she accepted \$59,355 as a full insurance  
15 settlement for damages to the aircraft as the result of an accident on July 4, 2006 (the release does not,  
16 however, indicate who owned the aircraft after the settlement and there is some evidence—a notarized  
17 lien document that suggests petitioner entered into a contract on October 11, 2006, to sell parts from  
18 the aircraft and petitioner's deregistration of the aircraft with the Federal Aviation Administration  
19 effective June 11, 2008—that indicates petitioner continued to own the aircraft after the settlement).

20 Since the aircraft was purchased in February 2006, the provisions of Revenue and Taxation  
21 Code section 6248, as in effect for the period October 2, 2004, through June 30, 2007, are applicable to  
22 determine whether the aircraft was purchased for use in this state. An aircraft that was purchased  
23 during this period and first functionally used outside of California, and then brought into California  
24 within 12 months from the date of purchase, is rebuttably presumed to have been purchased for use in  
25 this state if: (1) the purchaser is a California resident as defined in section 516 of the Vehicle Code; (2)  
26 the aircraft was subject to property tax in this state during the first 12 months of ownership; or (3) the  
27 aircraft was used or stored in this state more than one-half of the time during the first 12 months of  
28 ownership. (Rev. & Tax. Code, § 6248, subd. (a); Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A).)

1 The presumption may be rebutted by documentary evidence indicating that the aircraft was purchased  
2 for use outside California during the first 12 months of ownership, including but not limited to  
3 evidence of registration of the aircraft with the proper authority outside California. (Rev. & Tax.  
4 Code, § 6248, subd. (b); Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(B).) However, an aircraft  
5 brought into California for the purpose of repair, retrofit, or modification is not deemed to have been  
6 purchased for use in this state unless such aircraft is flown by the registered owner, or by the owner's  
7 agent on the owner's behalf, for more than 25 hours of flight time during the period following the time  
8 that the aircraft is brought to California, and ending when the repair, retrofit, or modification is  
9 complete. (Rev. & Tax. Code, § 6248, subd. (e); Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(D).)

10 Petitioner has provided conflicting accounts as to when the aircraft was first flown into  
11 California, and for what purpose. Regardless of which of the possible dates on which the aircraft first  
12 entered California, there is no dispute that the aircraft entered California during the first 12 months of  
13 petitioner's ownership, which satisfies the first condition of section 6248, subdivision (a), for the  
14 presumption of purchase for use in California to apply. The other condition of section 6248,  
15 subdivision (a), is also satisfied, for a variety of reasons: the aircraft was used or stored in California  
16 more during than one-half of the first 12 months of ownership (entered California within five months  
17 of purchase and never thereafter removed from California); the aircraft was subject to property tax in  
18 California during the first 12 months of ownership (2007 Alameda County property tax roll); and  
19 petitioner was a California resident at the time of purchase (never intended to change residence to  
20 Oregon because continued to own home and maintain hangar space in California). The flight logs that  
21 petitioner submitted did not provide information from which it can be determined if the aircraft was  
22 brought into this state for the purpose of modification since there is no work order for the modification,  
23 which petitioner has described as installation of floats, no receipt for floats, or any other evidence that  
24 floats were to be installed on the aircraft. Accordingly, we find the evidence does not establish that the  
25 aircraft entered California for purposes of repair, retrofit, or modification within the meaning of section  
26 6248, subdivision (e). As such, the presumption of section 6248, subdivision (a), remains applicable.  
27 This presumption may be controverted by documentary evidence that the aircraft was not purchased  
28 for use in this state. However, petitioner has not provided such documentary evidence. We therefore

1 find that the presumption of section 6248, subdivision (a), is applicable, and has not been rebutted.  
2 Accordingly, the aircraft was purchased for use in California and use tax is applicable, owed by  
3 petitioner measured by the purchase price of the aircraft.

4 **OTHER DEVELOPMENTS**

5 None.

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7 Summary prepared by Rey Obligacion, Retired Annuitant  
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