

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:)
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

<u>Item</u>	<u>Disputed Amount</u>
Purchase of aircraft subject to use tax	\$380,000
Tax as determined and protested	\$33,250.00
Interest through 11/30/13	<u>5,957.31</u>
Total tax and interest	<u>\$39,207.31</u>
Monthly interest beginning 12/01/13	<u>\$ 166.25</u>

This matter was scheduled for Board hearing in August 2013, but was postponed at petitioner's request to allow additional time to prepare.

UNRESOLVED ISSUE

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

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

When the Sales and Use Tax Department (Department) became aware of petitioner's aircraft purchase, it sent petitioner a return to report its purchase. Petitioner filed the return identifying a purchase price of \$380,000 but claiming that the transaction was exempt from tax because the aircraft was purchased for use and was used in interstate commerce. The Department requested evidence to

1 support the claimed exemption, but petitioner did not respond. The Department then issued the Notice
2 of Determination in dispute.

3 Petitioner contends that the partners, who are both medical doctors, licensed pilots, and
4 members of Innovative Pain Treatment Solutions, LLC (IPTS), purchased the aircraft to further the
5 business purposes of IPTS. Petitioner asserts it used the aircraft solely for business purposes, it did not
6 purchase the aircraft for personal use, and one-half or more of the flight time traveled by the aircraft
7 during the six-month period immediately following its entry into California (September 11, 2010,
8 through March 11, 2011) was commercial flight time traveled in interstate or foreign commerce. As
9 evidence, petitioner has provided various types of evidence, as detailed in the D&R. The evidence is
10 sufficient to establish that the aircraft was delivered to petitioner and first functionally used outside
11 California, and the aircraft was brought into California the day after it was delivered to petitioner. To
12 document that the aircraft was purchased for interstate commerce, petitioner provided a flight log
13 summary, an Excel spreadsheet of flights based on the flight-log summary, and documents entitled
14 “Trip Notes Innovative Pain Treatment Solutions, LLC,” signed under penalty of perjury by one or
15 both of the partners, for all out-of-state flights listed in the flight log summary from September 11,
16 2010, through February 24, 2011. Relying on these documents, petitioner asserts that the aircraft was
17 flown 35.6 Hobbs hours during the six months immediately following its entry into California and that
18 29.5 of those hours (about 83 percent) were flights in interstate commerce.

19 Since the aircraft was delivered to petitioner and the aircraft was first functionally used outside
20 California and was brought into California the day after delivery, and both partners are California
21 residents, it is rebuttably presumed that the aircraft was acquired for storage, use, or other consumption
22 in this state. (Rev. & Tax. Code, § 6248, subds. (a)(1)-(4).) With respect to petitioner’s assertion that
23 one-half or more of the flight time traveled by the aircraft during the six-month period immediately
24 following its entry into California was commercial flight time traveled in interstate commerce, it is
25 undisputed that the flight log was not completed contemporaneously with the flights. In addition to the
26 fact that the flight log was apparently completed from memory, and thus could easily be incomplete,
27 there is no evidence of the Hobbs hours shown on the aircraft at the time of entry into California or at
28 the end of the six-month test period, and, without knowing the total hours flown during the test period,

1 the percentage of flight time travelled in interstate commerce cannot be computed. Also, the
2 FlightAware printouts provided by petitioner as objective secondary support of the flight log do not
3 include all of the flights on the flight log. Notably, the FlightAware printouts do not include flights
4 that represent 5.8 of the 6.1 Hobbs hours of intrastate flight time shown on petitioner's flight log.
5 Since petitioners' own submissions show that the printouts do not account for all of petitioners' flights,
6 the printouts are unreliable. In addition, the flight log shows only 4.7 of flight hours for training
7 although petitioner's insurance required a combined 45 hours of flight training before either partner
8 flew solo. Thus, it appears that several training flights (which most likely would have been intrastate
9 flights) have been excluded from the flight log. Petitioner asserts that the absence of 40.3 hours of
10 flight training on the flight log is not evidence that the flight log is incomplete because the partners
11 could have rented another airplane for training. However, petitioner has provided no evidence of such
12 rental. Thus, we find that the flight log is not credible evidence of the actual use of the aircraft during
13 the six-month test period, and we are not convinced that one-half or more of the flight time was in
14 interstate flights. Moreover, the only evidence to show that the flights were for commercial, rather
15 than personal, use is the Trip Notes containing declarations signed by petitioner's partners. However,
16 its partners' declarations alone, without any corroborating evidence, are not sufficient reliable evidence
17 of a commercial purpose. Because of the lack of corroborating evidence, we are not persuaded that
18 these flights had a commercial purpose.

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

26 **OTHER MATTERS**

27 None.

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