



STATE BOARD OF EQUALIZATION

February 9, 1973

Dear,

Reference is made to the December 4, 1972 preliminary hearing regarding the March 14, 1972 petition for redetermination which your client, ---, filed with respect to tax assessed for the audit --- February 20, 1968 to September 30, 1971. At the hearing, you questioned the inclusion of amounts of \$25,517, \$6,546 and \$3,700 in the taxable measures. Items 1, B, and C of the audit report, respectively. The Decision And Recommendations with respect thereto is enclosed.

With respect to the amounts included in the taxable measures of Items B and C, if your client can establish that any of those amounts were not subject to tax, it should so advise Auditor Blue.

If we do not hear from you or your client within 30 days from the date of this letter, we shall assume that your client concurs in the recommendations, and subsequent to any appropriate adjustments in the taxable measures, we shall present the matter to the board for final action. In this event, your client will receive official notice of the board's action in due course. In the event that your client does not concur in the recommendations and it desires an oral hearing before the board, please notify Mr. C. H. Alsop, P.O. Box 1799, Sacramento, California 95808, of this fact within the 30-day period and he will inform you and your client of the time and place of hearing.

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:
Enclosure

Cc:
Bcc: Santa Rosa – Dist. Admin.

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

330.3297

In the Matter of the Petition)
---)
A Corporation)
for Redetermination Under the)
Sales and Use Tax Law)
)
)

DECISION AND RECOMMENDATION

No. ----

The above entitled matter came on regularly for hearing on Monday, December 4, 1972 at 3:00 p.m. in Santa Rosa, California.

Appearing for the petitioner were --- its President, and ---, Certified Public Accountant. Messrs. Olivier and Blue appeared for the board.

Protested Items
(Period 2/20/68 to 9/30/71)

<u>Item</u>	<u>Measure at 5% Rate</u>
Item A. Membership dues in flying club regarded as receipts from aircraft leases not reported	\$25,517
Item B. Receipts from charter service not reported	6,546
Item C. Delivery charges on sales of aircraft not reported	3,700

Petitioner's Contentions

1. Dues paid to petitioner pursuant to an --- were for amenities offered only to club members, and the amounts thereof were not subject to tax.

2. Amounts of receipts derived from charters of aircraft acquired tax-paid were erroneously included in the taxable measure, and such, amounts were not subject to tax.

3. Amounts of delivery charges were erroneously included in the taxable measure, and such amounts were not subject to tax.

Summary of Petition

Item A. Petitioner sells, leases and services aircraft. In addition to leasing aircraft pursuant to its Renter Pilot Agreement, it also leased aircraft pursuant to its Air Country Club Agreement which provided as follows:

"This agreement entered into between --- hereinafter referred to as Lessor and --- hereinafter referred to as club member will be valid for one year from --- to ---.

"1. Aircraft and other equipment will be made available to club member at club rates in accordance with Lessors rental Pilot Agreement. which becomes a part of this agreement.

"2. Annual dues: First year \$275.00; renewals \$250.00 for subsequent years. Family memberships: \$100.00 per year for each additional member in same family. I.E. Wife, son or daughter. Dues are nonrefundable, except under termination provisions shown in last paragraph.

"3. Club member is in no way responsible for actions of other club members, club functions are purely social in nature. Use of Lessors equipment is on a direct Lessor to Lessee arrangement for which appropriate charges will be made by Lessor.

"4. Club members may charge his activities to a maximum outstanding balance of \$100.00. At this time a statement will be rendered and payment shall be made by club member within 10 days thereafter.

"5. This agreement may be terminated by Lessor at any time with or without cause. If termination is because of violation of any condition of Renter Pilot Agreement, or non-payment of charges, no refund will be allowed. If termination is by mutual agreement or without cause, a prorated refund or annual dues may be allowed.

I have read and agree to above"

The auditor regarded dues paid to petitioner pursuant to the Air Country Club Agreement as advance lease payments and the amounts thereof as taxable lease receipts. As petitioner did not report or pay taxes with respect thereto, an amount equal to the amounts of dues was established as the taxable measure.

Per the petition and at the hearing, it was asserted that dues were for amenities ,offered only to club members, not advance lease payments, and that the amounts thereof were not subject to tax. In that regard, --- stated that club members derived from their

memberships such benefits as the services of a manager for club events and activities, the use of a club room, the use of a courtesy car maintained at Lake Tahoe, and club jackets. He also stated that while aircraft were leased at discounted rates to club members, they were also leased at discounted rates to company employees and to "leaseback" aircraft owners, that discounted rates varied from group to group, that discounted rates varied further if "block time" was involved, and that dues were never applied against aircraft rental time. Finally, he stated that owners of aircraft could also become club members by acquiring associate memberships in the club.

The auditors stated that dues and the amounts thereof had been so regarded because being able to lease aircraft at the discounted rates available to club members was contingent upon the payment of dues.

Item B. Petitioner also charters aircraft. It reported and paid taxes measured by receipts derived from charters during the first and second Quarters of 1968 and during the first, second, and third quarters of 1971, but it did not report or pay taxes measured by such receipts during the third and fourth quarters of 1968, during the first and second quarters of 1969, or during the first quarter of 1970. Absent evidence that any such receipts were not subject to tax, an amount equal to the amounts of such unreported receipts was established as the taxable measure.

It was asserted that amounts of receipts derived from charters of aircraft acquired tax-paid had been erroneously included in the taxable measure, and that such amounts were not subject to tax.

Item C. With respect to certain sales of aircraft, petitioner's book sales prices and/or contract sales prices included amounts for delivery charges. The auditor regarded those charges as parts of the sales prices and the amounts thereof as taxable sale receipts. As petitioner did not report or pay taxes with respect thereto, an amount equal to the amounts of those charges was established as the taxable measure.

It was asserted that amounts of delivery charges had been erroneously included in the taxable measure, and that such amounts were not subject to tax. In that regard, --- stated that although purchasers intended to take delivery of their aircraft in California and were to pay delivery charges in connection therewith, they subsequently changed their minds and took delivery at factories located outside California. Thus, although contract sales' prices included amounts for delivery charges, no delivery charges had been made.

The auditors stated that delivery charges and the amounts thereof had been so regarded because petitioner had not established that purchasers had taken delivery of their aircraft outside California.

Analysis and Conclusions

1. "Sales –price" means the total amount for which tangible personal property is sold or leased or rented, as the case may be (Sales and Use Tax Law Section 6011 (a)). Dues paid to flying clubs in return for the privilege of being able to lease aircraft at discounted rates constitute part of the "sales prices" for which the aircraft are leased, and the amounts thereof are taxable lease receipts (Cal. Tax. Serv. Ann. No. 330.3300).

Paragraph 1 of the Air Country Club Agreement and the testimony presented indicate that dues paid to petitioner were, to some extent, paid in return for the privilege of being able to lease aircraft at discounted rates available to club members. Thus, those portions attributable to payments for that privilege constituted part of the "sales prices" for which aircraft were leased, and the amounts thereof were taxable lease receipts. However, those portions attributable to the costs of amenities offered to club members did not constitute part of the "sales prices" for which aircraft were leased, and the amounts thereof were not subject to tax. Accordingly, such amounts should be deleted from the taxable measure.

2. Every seller and every retailer is required to keep such records, receipts, invoices, and other pertinent papers in such form as the board requires (section 7053). Among others, such records are to show all deductions allowed by law and claimed in filing returns (ruling 78, now regulation l698). In view of the section and the ruling, the burden of proving that amounts of receipts derived from charters of aircraft acquired tax-paid were included in the taxable measure is upon petitioner. Although petitioner has not met that burden, it should be given the opportunity to do so. Thus, to the extent that petitioner can establish from its records that such amounts were included in the taxable measure, the amount of the taxable measure should be reduced accordingly. Otherwise, that amount should remain unchanged.

3. Again, in view of section 7053 and ruling 78, the burden of proving that purchasers took delivery of their aircraft outside California is upon petitioner. Although petitioner has not met that burden, it should be given the opportunity to do so. Thus, to the extent that petitioner can establish that such was the case, the amount of the taxable measure should be reduced accordingly. Otherwise, that amount should remain unchanged.

Recommendations

1. With respect to Item A, it is recommended that the amount of the taxable measure be recomputed, as appropriate.

2. With respect to Item B, it is recommended that petitioner be given the opportunity to establish that amounts of receipts derived from charters of aircraft acquired tax-paid were included in the taxable measure. To the extent that it does, the

amount of the taxable measure should be recomputed. Otherwise, the amount of the taxable measure should remain unchanged.

3. With respect to Item C, it is recommended that petitioner be given the opportunity to establish that purchasers took delivery of their aircraft outside California. To the extent that it does, the amount of the taxable measure should be recomputed. Otherwise, the amount of the taxable measure should remain unchanged.

Adjustments to be made by Santa Rosa District - Auditing.

J. Kenneth McManigal, Hearing Officer

Date

Revised for Audit:

Principal Tax Auditor

Date