

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7712

May 7, 1991

REDACTED TEXT

Dear REDACTED TEXT:

Re: REDACTED TEXT

Enclosed is a copy of the Decision and Recommendation pertaining to the petition for redetermination in the above-referenced matter.

I have recommended that the determination be redetermined without adjustment as explained in the Decision and Recommendation.

There are three options available to you at this point.

1. If, after reading the Hearing Decision and Recommendation, you believe that you have new evidence and/or contentions, you should file a Request for Reconsideration. No special form is required to file the Request for Reconsideration, but it must be filed within 30 days from the date of this letter and clearly set forth any new contentions. If new evidence is the basis for filing the request, such evidence must be included. Direct any such request directly to me, with a copy sent to the State Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0001, Attn: Principal Tax Auditor. I will subsequently notify you whether the request has been taken under review or whether the request is insufficient to warrant an adjustment. If I conclude that no adjustment is warranted, I will then notify you of the procedure you can follow to request an oral hearing before the Board.

2. If, after reading the Hearing Decision and Recommendation, you find that there is no basis for filing a Request for Reconsideration, but nevertheless desire to have an oral hearing before the Board, a written request must be filed within 30 days with Ms. Janice Masterton, Assistant to the Executive Director, Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0001.

3. If neither a request for Board hearing nor a Request for Reconsideration is received within thirty (30) days from the date of this letter, the Hearing Decision and Recommendation will be presented to the Board for final consideration and action.

Very truly yours,
H. L. Cohen
Hearing Officer

HLC:ct
Enc.

cc: Mr. REDACTED TEXT, CPA
(w/enclosure)

Ms. Janice Masterton
Assistant to the Executive Director (w/enclosure)

Mr. Glenn Bystrom
Principal Tax Auditor (file attached)

E. L. Sorensen, Jr., Chief Counsel (w/enclosure)

Consumer Use Tax Division – Chief (w/enclosure)

San Francisco – District Administrator (w/enclosure)

San Jose – District Administrator (w/enclosure)

STATE OF CALIFORNIA

800.0035

BOARD OF EQUALIZATION

APPEALS DIVISION

In the Matter of the Petition)	HEARING
for Redetermination Under the)	DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)	
)	
REDACTED TEXT)	No. REDACTED TEXT
)	
)	
<u>Petitioner</u>)	

The above-referenced matter came on regularly for hearing before Hearing Officer H. L. Cohen on February 28, 1991 in San Mateo, California.

Appearing for Petitioner: REDACTED TEXT, CPA

Appearing for the Sales and Use Tax Department:	Ms. C. Pascual Senior Tax Auditor San Mateo Branch Office
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Protested Item

The protested tax liability is based on the cost, \$565,000, of an aircraft used in the San Mateo Transportation Authority and San Mateo County Transit Districts. Petitioner protests only the district taxes. Petitioner does not protest the application of the state, local and county tax to the use of the aircraft.

Contention

Petitioner contends that the aircraft in question was principally used outside the special tax districts.

Summary

Petitioner purchased an airplane from the X CORPORATION. The sale was brokered by Y CORPORATION Aircraft Sales, Inc. The sale took place on April 13, 1989. Y CORPORATION is located at the San Jose airport in Santa Clara County. The airplane was registered with the Federal Aviation Administration showing a Menlo Park address for petitioner.

The first entry in petitioner's flight log is for May 24, 1989. It is listed as a test flight from San Jose airport to Truckee. The auditor contacted Y CORPORATION and was informed that petitioner took possession of the airplane in San Jose but not until the purchase conditions requiring refurbishing and repainting were complete. Between the purchase date and first flight, petitioner took flight familiarization training at manufacturer's location in Wichita, Kansas.

The auditor concluded that since petitioner had taken delivery of the airplane in San Jose and had a residence in Menlo Park, petitioner was liable for the district use tax. The auditor also analyzed petitioner's flight log and concluded that the airplane had been in San Jose for 64.13 percent of the time during the first six months after the initial flight on May 24. Petitioner had previously agreed that his use of the airplane was subject to the state, local and county tax, and had paid that tax with respect to the amount he had paid for the airplane.

Petitioner states that he has residences in both Menlo Park and Tahoe City, and that the airplane was purchased primarily for use in Truckee where he has a business. He rents hanger space in both Truckee and in San Jose. The airplane was re-registered to petitioner's Tahoe City address on September 29, 1989 with the retroactive date of April 12, 1989. Petitioner also contends that the principal use of the airplane was outside the special tax district.

In order to verify petitioner's contentions as to the primary basing location for the airplane, the auditor contacted the assessors of both Santa Clara County and Placer County (Truckee and Tahoe City are located in Placer County). Neither assessor carried the airplane on the property tax rolls.

Analysis and Conclusions

Transactions and Use Tax Regulation 1823 provides in subdivision (b)(1) that district use taxes apply if tangible personal property is purchased from a retailer and the property is purchased for use in the district and is actually used there provided there is an exemption of the sale from the transaction (district sales) tax, but there is no exemption of the use of the property from the district use tax. Section 6283 of the Revenue and Taxation Code exempts from sales tax sales of aircraft by persons other than aircraft dealers. The sale of the aircraft to petitioner was not subject to the sales tax because it was purchased from X CORPORATION. X CORPORATION was not an aircraft dealer. It is uncontested that the aircraft was used in the district. If it is concluded that the aircraft was purchased for the purpose of use in the district, the district use tax applies.

Section 7262 provides in subdivision (a)(1) that all provisions of the statewide use tax which are not inconsistent with the district tax shall apply with respect to the district tax. This is accomplished by substituting the name of the district for the word "state" in the appropriate location. Sales and Use Tax Regulation 1620 establishes an objective test for determining a buyer's intention with respect to the place of use of the property. That is, the actual place of use of property is examined rather than the buyer's subjective intentions. The test contains three parts: (1) If the property is first functionally used in the district, it is regarded as having been purchased for the purpose of use in the district; (2) if the property is first functionally used outside the district and is not brought into the district within 90 days after purchase, excluding any time for shipment to the district or time for storage for shipment to the district, it will be

presumed that the property was not purchased for use within the district; (3) if the property is first functionally used outside the district but is brought into the district within 90 days, it will be presumed that the property was purchased for use in the district unless it was used outside the district one-half or more of the time during the six-month period immediately following its entry into the district.

Petitioner's first functional use of the aircraft was in the district. That alone is sufficient to create liability for the district use tax. However, even if the location of actual use is examined, it is seen that it was in the district more than half of the time during the first six months. Under the regulation, it must be presumed that the aircraft was purchased for use in the district. Petitioner is therefore liable for the district use tax.

Recommendation

Redetermine without change.

H. L. Cohen, Hearing Officer

Date 4-26-91