

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**CASTILLE INVESTMENT COMPANY, LLC
PETITIONER**

VERSUS

DOCKET NO. 9047

**SECRETARY, DEPARTMENT OF REVENUE,
STATE OF LOUISIANA
RESPONDENT**

**JUDGMENT
WITH ADDITIONAL WRITTEN REASONS**

A hearing on the merits of this matter was held before the Board on September 9, 2015 with Judge Tony Graphia (Ret.), Chairman; Vice-Chairman Cade R. Cole and Board Member Kernan A. Hand present. Present before the Board were: Cheryl M. Kornick and Robert S. Angelico, attorney for Castille Investment Company, LLC (“Taxpayer”) and Adrienne D. Quillen, attorney for the Secretary, Department of Revenue (Secretary) After the hearing, the matter was taken under advisement.

Taxpayer appeals the Secretary’s assessment of sales/use tax in the amount of \$102,000.00 plus interest and penalties for the period 3/1/2013 that the Secretary has assessed on the purchase of an aircraft.

Taxpayer purchased a Raytheon Aircraft Company B 200 (Beachcraft King Air B 200) aircraft (the “Aircraft”) from Fargo Jet Center on March 19, 2013 for the price of \$2,550,000. It is the purchase of the aircraft upon which the Secretary wishes to impose a Louisiana sales/use tax.

Taxpayer’s position is that the purchase of the Aircraft is excluded from sales or use tax under the provisions of LSA-R.S. 47:301(10)(a)(iii), which statute provides in pertinent part:

“(iii) “Retail sale” or “sale at retail” ...means a sale to a consumer or to any other person for any purpose...other than for lease or rental in an

arms length transaction in the form of tangible personal property...”(emphasis supplied).

The foregoing statute, in regard to the matter under consideration, has two necessary requirements for a transaction to be excluded and therefore not considered a “retail sale” or a “sale at retail.” Those requirements are: (1) the purchase of the tangible personal property must be purchased for the **purpose** of leasing or renting the thing; and (2) the rental or lease must be an arms length transaction between the purchaser-lessor and the lessee.

To qualify for the exclusion, the taxpayer must have purchased the Aircraft for the purpose of leasing it to another in an arm’s length transaction. In determining whether the lease was an arm’s length transaction, we first examine the terms and provisions of the lease between Taxpayer and the lessee.

The lease upon which Taxpayer seeks to qualify under the provisions of LSA-R.S. 47:301(10)(a)(iii) is the lease between Taxpayer as lessor and Southern Tower Antenna Rental II, LLC as lessee (the Lease).

The evidence showed that Taxpayer and Southern Tower Antenna Rental II, LLC were, at all relevant times, related parties. The testimony at trial showed that both parties were owned and controlled by Carol Castille, or affiliated family trusts. Carol Castille, and his affiliated employees, ultimately exercised decision-making power and influence over both the lessor and the lessee. Taxpayer’s representative testified that the Aircraft was purchased by Taxpayer, rather than directly by the lessee, because the lessee was burdened with too much debt at the time to purchase the Aircraft itself.

The term of the Lease was from March 15, 2013 through March 14, 2014. The rent that the lessee was obligated to pay was \$500 per flight hour, plus an annual assessment for insurance, maintenance of software, hangar/office lease expenses,

management fee expenses, miscellaneous service expenses, principal and interest repayment on the aircraft and taxes and other related fees. The expense of the pilot was also the obligation of the lessee.

Both the lessor and the lessee of the Lease are entities that are directly or indirectly controlled by Carrol Castille.

The Lease was for the term March 14, 2013 through March 14, 2014. The Taxpayer introduced flight logs covering the first and second quarter of 2013 and invoices for the 1st, 2nd and 4th quarters of 2013. Those documents revealed that during the period of March 22, 2013 through December 31, 2013, the Aircraft had been flown a total of 50.2 hours. The aircraft flight logs revealed that during that time the Aircraft was used mostly for non-business purposes of Carol Castille, his wife Stacy, his family and friends.¹

The invoice for the 1st quarter of 2013 required the lessee to pay for 9.7 hours and included 6.5 hours of the recreational time referred to above. The invoice for the 2nd quarter of 2013 was for 31.6 hours. During that quarter, there was 24.7 hours of recreation flight time. It appears that all or the vast majority of the recreational flight time was to be paid by the lessee.

It appears that the "Rent" found in paragraph 7 and Appendix I of the lease was unrealistic and that no arm's length lessee would pay the rent called for in the lease. The lessee was obligated to pay \$500 per flight hour, all maintenance, hangar expense, insurance, and all other expenses connected with the Aircraft, including :

¹ That usage included the following trips: Stacy and family to Disney 4.4 hours; Carol and Stacy to Gulf Shores, 2.1 hours; to Augusta, Masters, 4.9 hours; Stacy and family to Atlanta, 3.9 hours; family to Bahamas 8.6 hours; Carol and Stacy to Key Largo 5.4 hours; Stacy + 2 to Gulf Shores, 1.9 hours. The total of the aforementioned recreational time was 31.2 hours. The total flight of the Aircraft was 50.2 hours. The aforementioned recreation aircraft time was 62% of the total Aircraft time. Because the remaining flight logs were not provided to counsel for the Department or presented to the Board, it was not possible to ascertain the overall percentage of personal or recreational use of the Aircraft during the entire lease term.

“f”. Principal repayment debt on the Aircraft and associated interest expense accruing.” In other-words, the lessee was obligated to pay not only the lease payments, but also pay for the purchase of the Aircraft.

Taxpayer presented no evidence to the Board that the aforementioned sums were ever actually paid by the lessee to the Taxpayer, the testimony was that the other payments were made but that the lease was not followed as to the principal and interest on the debt. The use pattern for the aircraft, together with fact that payments were not fully or timely made by the lessee in accordance with the lease terms, suggests that the lease was not truly arm’s length.

The term “arm’s length transaction” is generally understood to be one where the deal is constructed in the manner as between parties free and independent of each other, without some special relationship or where one party has control over the other. In the case under consideration both the lessor and the lessee of the Lease are under the direct or indirect control of Carrol Castille or entities controlled by him. Therefore the underlying terms must be consistent with those that would have been obtained and applied in an arm’s length lease.

The Taxpayer argued that the total lease rate amounted to \$1,500 -\$1,600 per flight hour, but the evidence did not establish that payments were made in accordance with the terms of the Lease. The parties to the Lease exercised the freedom to adhere to the terms of the lease as they saw fit despite its express written terms. Taxpayer could not show that the payments called for by the lease were all paid by the lessee. Ignoring certain contractual provisions is not the type of conduct that would occur in a true arm’s length lease.

The evidence provided by the Taxpayer showed that the Aircraft was used, in good part (approximately 62% of the time), for trips by Carrol Castille, his wife and

family. Lessee was invoiced for the use of the Aircraft but did not pay in accordance with the terms of the Lease

It appears that the legislature when it passed this exclusion, felt that it was inequitable for the state to impose a sales or use tax on the sales price of tangible personal property which was purchased for the **purpose** of being leased, and also impose a lease tax on the lease payments received by the lessor. We do not find that the law was intended to allow an entity to purchase tangible personal property free of the sales or use tax only to then **occasionally** lease the thing while using it for varied purposes other than for an arm's length lease to a third party.

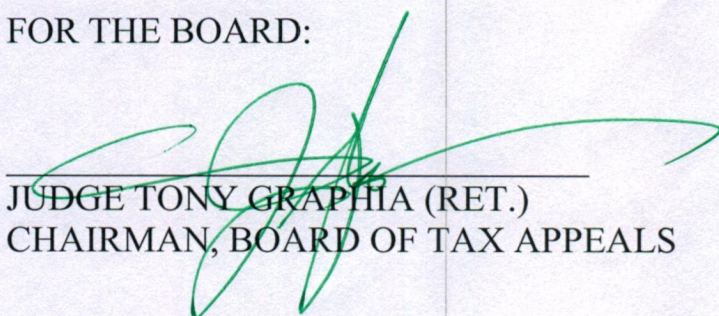
The taxpayer must prove that it qualifies for the exclusion and that it purchased the Aircraft for the **Purpose** of leasing the Aircraft in an arm's length transaction. Taxpayer has not met its burden.

The Board rules that the Aircraft was not purchased for the purpose of leasing to lease in an "arm's length transaction." The evidence in the present case fails to support this taxpayer's claims for an exclusion from tax.

IT, IS ORDERED, ADJUDGED AND DECREED that the Taxpayer's petition is dismissed, and the Secretary's assessment is upheld and affirmed.

Baton Rouge, Louisiana this 14th day of January, 2016.

FOR THE BOARD:



JUDGE TONY GRAPHIA (RET.)
CHAIRMAN, BOARD OF TAX APPEALS

Vice Chairman Cole concurs in the result only.