

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
11 PTC 635

In the Matter of the Appeal of:

Corporate Fleet Services LLC

FINAL DECISION

from the decision of the Cabarrus
County Board of Equalization and
Review concerning the taxation
and assessment of a certain aircraft
as business personal property for
tax year 2010.

This appeal was heard before the North Carolina Property Tax Commission (“Commission”) sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina on Tuesday, October 14, 2014 and Wednesday, October 15, 2014, pursuant to the appeal of **Corporate Fleet Services LLC** (“CFS” or “Appellant”). Appellant appealed to the Commission from the decision of the Cabarrus County Board of Equalization and Review (“County Board”), in which the County Board decided not to abate the tax bills, penalties or interest regarding a certain aircraft that Cabarrus County taxed effective for tax year 2010.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler and Commission Members David A. Smith and Jack C. Morgan III participating.

Ian M. Byrne, Esquire, with the law firm of Caudle & Spears, P.A. represented **Corporate Fleet Services LLC** at the hearing. Richard M. Koch, Esquire, represented Cabarrus County at the hearing.

STATEMENT OF THE CASE

Corporate Fleet Services LLC (“CFS”) appeals the decision of the County Board not to abate the taxes, penalties and interest imposed by Cabarrus County regarding its 1994 Dassault Falcon 900B N98NX aircraft (“Dassault Aircraft”). In particular, CFS is appealing the taxability of a Dassault Falcon 900B aircraft with a taxable value of \$14,000,000 as of January 1, 2010. CFS contends that the subject Dassault Aircraft was excluded from county ad valorem tax as a special classification of property pursuant to Article V, Sec. 2(2), of the North Carolina Constitution and pursuant to N.C. Gen. Stat. § 105-275(34). Cabarrus County contends that the subject Dassault Aircraft is not exempt from county ad valorem taxation, and thus requests the Commission to affirm the County Board’s decision not to abate the taxes, penalties or interest imposed for tax year 2010.

ISSUE

In the Order on Final Pre-hearing Conference filed with the Commission, the parties did agree on the precise phrasing of the issue being considered. The issue considered by the Commission is stated as follows:

Whether the Taxpayer's 1994 Dassault Falcon 900B corporate jet aircraft was inventory exempt from business personal property taxation under N.C.G.S. § 105-275(34).

APPLICABLE LAW

N.C.G.S. § 105-275(34) excludes "Inventories owned by retail and wholesale merchants from tax. N.C. Gen. Stat. § 105-273(8a) contains the current statutory definition that provides as follows:

"(8a) Inventories. – Any of the following:

a. Goods held for sale in the regular course of business by manufacturers, retail or wholesale merchants, and construction contractors. As to retail and wholesale merchants and construction contractors, the term includes packaging materials that accompany and become a part of the goods sold."

FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING FILED IN THIS MATTER, THE STIPULATIONS, IF ANY, AND THE EVIDENCE PRESENTED AT THE HEARING, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. Corporate Fleet Services LLC ("CFS") is a duly organized limited liability company in the State of North Carolina and was formed on December 31, 2007. CFS is regularly engaged in the aircraft sales and management business as provided on its 2010 Annual Report filed with the North Carolina Secretary of State.
3. The principal office for CFS is located at 17039 Kenton Drive, Cornelius, NC 28031.
4. The property subject to this appeal is a 1994 Dassault Falcon 900B N98NX corporate jet aircraft ("subject aircraft") owned by CFS.
5. This case arises from a 2010 business personal property tax bill ("2010 tax bill") issued by Cabarrus County to CFS assessing taxes on the value of \$14,000,000 for the 1994 Dassault Falcon 900B N98NX corporate jet aircraft ("subject aircraft").

Cabarrus County issued the 2010 tax bill when it determined that the subject aircraft was used for purposes other than demonstration for sale.

6. CFS appealed Cabarrus County's assessment of the subject aircraft to the Cabarrus County Board of Equalization and Review ("County Board") and challenged the assessment of the subject aircraft by Cabarrus County. By notice mailed on August 4, 2011, the County Board notified CFS of its decision not to abate the taxes, penalties and interest imposed by Cabarrus County with reference to the subject aircraft.

7. From the County Board's decision, CFS filed a timely Notice of Appeal and Application for Hearing with the Commission.

8. CFS is an aircraft brokerage firm specializing in the sale of corporate jets. The company was started in Charlotte and currently has offices in Huntersville, North Carolina.

9. As provided on the 2010 Annual Report filed with the North Carolina Secretary of State, the principal business of CFS is "Aircraft Sales & Management".¹ The Operating Agreement provides that CFS was formed to buy and sell aircrafts.²

10. The initial 2010 business personal property tax bill to CFS from Cabarrus County concerned the taxation of two aircraft that were in CFS's inventory, namely the Falcon 900B N98NX (subject aircraft) and the Learjet 31A N160CF.

11. By letter dated July 23, 2010, the Cabarrus County Tax Assessor's Office informed³ CFS that since the subject aircraft "is being used for purposes other than demonstration for sale it does not meet the qualification as Inventory for Sale and is taxable."⁴ The July 23, 2010 letter also informed CFS that Cabarrus County would release the Learjet from the 2010 business personal property tax bill since CFS sold the Learjet.

12. In order to maintain the operation of the aircraft (i.e. at least 150 hours per year/12.5 hours per month) and to sustain the carrying costs (i.e. interest cost and maintenance costs for owning the subject aircraft), CFS stored the subject aircraft at a hangar owned by its partner, Rick Hendrick, owner of Hendrick Motorsports.

13. CFS did conduct flights for demonstrations of the subject aircraft and a trip to a tradeshow to show the aircraft to potential clients and/or customers.⁵

¹ Appellant Exhibit Number 4.

² Appellant Exhibits Number 5.

³ The July 23, 2010 letter to Corporate Fleet Services was signed by Patricia D. G. Rogers, Personal Property Appraiser, Cabarrus County Assessor's Office.

⁴ Id.

⁵ See Appellant Exhibit Numbers 28 and 29.

14. Use of the subject aircraft by Hendrick Motorsports and others was consistent with the subject aircraft's classification as inventory.

15. The nature of the subject aircraft required that it be flown in order to maintain the function of the aircraft's engine.

16. There was no lease agreement between CFS and Hendrick Motorsport for use of the subject aircraft by Hendrick Motorsport.

17. At all time relevant to Cabarrus County's taxation of the subject aircraft, CFS held the subject aircraft for sale.

18. Use of the subject aircraft by Hendrick Motorsports and others provided beneficial results concerning the maintenance and performance requirement of the subject aircraft.

19. Withdrawal of the subject aircraft for demonstration use does not defeat the subject aircraft's classification as inventory when the use of the subject aircraft by Hendrick Motorsports and others was a beneficial use to CFS by mitigating maintenance costs associated with holding the subject aircraft for sale.

20. CFS offered evidence that it maintained reasonable control of the subject aircraft at all times relevant to Cabarrus County's taxation of the aircraft.

21. The subject aircraft was held for sale, but at no time was the aircraft leased. As such, the subject aircraft did not lose its status as inventory held for sale in the regular course of business by CFS.

22. The subject aircraft is eligible for the inventory exemption since the aircraft was held for sale by CFS as of the relevant date at issue.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. The Appellant, Corporate Fleet Services LLC, did produce competent, material, and substantial evidence from which the Commission could conclude that the subject aircraft was "held for sale" in the regular course of business" by a retail or wholesale merchant, and the subject property is exempt from county ad valorem property taxation when CFS is an aircraft brokerage firm specializing in the sale of corporate jets.

2. The Appellant, Corporate Fleet Services LLC, did produce competent, material, and substantial evidence from which the Commission could conclude that the subject aircraft was excluded from county ad valorem property taxes as a result of a special classification of the property pursuant to Article V, Sec. 2(2), of the North Carolina Constitution and pursuant to N.C.G.S. § 105-275(34), and that the subject

property is exempt from county ad valorem taxes pursuant to N.C. Gen. Stat. § 105-273(8a)a. since CFS maintained reasonable control of the subject aircraft at all times relevant to Cabarrus County's taxation of the aircraft for the primary purpose to sell the aircraft.

3. The Appellant, Corporate Fleet Services LLC ("CFS"), did produce competent, material, and substantial evidence from which the Commission could conclude that the 1994 Dassault Falcon 900B corporate jet aircraft was inventory exempt from business personal property taxation under N.C.G.S. § 105-275(34).

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS that the decision of the Cabarrus County Board of Equalization and Review is **reversed**. Cabarrus County is instructed to revise its tax records as necessary to reflect the Findings of Fact and Conclusions of Law of the Commission set forth herein.

NORTH CAROLINA PROPERTY TAX COMMISSION



William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Members Smith and Morgan concur.

Entered: January 23, 2015

Attest:

Janet L. Shires, Esquire
Commission Secretary