

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 46960

Petitioner:

**CIVIL AVIATION TRAINING SOLUTIONS, INC.
(AS LESSEE AND ATTORNEY FOR U.S. BANK
NATIONAL ASSOCIATION)**

v.

Respondent:

DENVER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 21, 2008, Diane M. DeVries, James R. Meurer, and Sondra W. Mercier presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Michelle Bush, Esq. Petitioner is protesting the 2006 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Personal Property located at 4510 Airport Way, Denver
(Denver County Schedule No. 401-241-000)**

Civil Aviation Training Solutions, Inc. (“Petitioner”) trains airline pilots using flight simulators. As of the date of value, four simulators were in operation, identified as the subject property in this case. The simulators were manufactured by CAE, parent company of Petitioner. Petitioner purchased the simulators from CAE, and upon purchase transferred the property to U.S. Bank National Association, as successor in interest to State Street Bank and Trust Company of Connecticut National Association, under a sale leaseback agreement.

In addition to the mechanical and hydraulic equipment, each simulator includes a significant computer system and software component. This includes software developed specifically by CAE as well as data and licensing fees paid to other manufacturers, such as the specific airplane

manufacturer of the equipment being simulated. Upon purchase of the simulator, Petitioner has also purchased the licenses to use data, specific software, and the right to use the software in the simulator.

Petitioner contends that the software, licensing, and data required to operate the simulators is intangible property and is not subject to property tax. Petitioner does not dispute Respondent's ten-year life used to calculate depreciation on the subject property for this tax year once the intangible personal property is removed from the original installed cost. Petitioner is requesting a 2006 actual value of \$23,296,686.00 for the subject property.

Respondent contends that the original cost of the simulators is the amount paid by State Street Bank and Trust under the sale leaseback agreement. Further, Respondent indicated that sales tax of 7.2% was incorrectly omitted from prior calculations. Respondent also proposed that the original four-year life used for depreciation was more accurately calculated on a ten-year life basis, and that useful life was actually 20 to 25 years.

Most important to this case, Respondent contends that the software is not exempt as intangible property, incorrectly citing The Assessor's Reference Library ("ARL") as revised in January 2008, which states that "All software is exempt *except for software that is required to make the personal property work for its intended end user purposes* (as an integral part of the hardware)." 5 Assessor's Reference Library: Personal Property Manual 7.37 (2008) (emphasis added).

Respondent assigned an actual value of \$35,924,200.00 to the subject property for tax year 2006.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2006 valuation of the subject property was incorrect.

In the ARL, Original Installed Cost is defined to include "applicable sales/use tax" and "represents the cost to the owner for acquiring the item." *Id.* at 3.5 (2005). The cost to acquire the simulators was the sale from CAE to Petitioner. The later sale leaseback between State Street Bank and Trust and Petitioner was not an arm's-length transaction but rather a financing arrangement, and therefore does not represent the market for simulators. The calculation of original cost should reflect the original price paid by Petitioner in their purchase of the simulators from CAE.

At the time of purchase, neither Petitioner nor State Street Bank and Trust were required to pay sales tax. As instructed by the Denver Treasury Division taxes are paid by Petitioner on the services provided. Consequently, the Board rules that the 7.2% sales tax added by Respondent is not "applicable sales/use tax."

The Board was convinced that a percentage of the original cost of each simulator represented intangible personal property and is exempt pursuant to Colorado Revised Statutes ("C.R.S.") section 39-3-118 which states: "Intangible person property shall be exempt from the levy and collection of property tax. For purposes of this section, 'intangible personal property' shall include, but is not limited to, computer software." According to the ARL in effect on the value date, "All software is exempt except the machine language that is automatically initiated during the computer startup." 5

Assessor's Reference Library: Personal Property Manual 7.49 (2005). Based on detailed information provided by Petitioner showing both the construction as well as purchase of the simulators, the Board was convinced that the software specifically designed and required for the operation of the simulator fits the definition of intangible personal property that is exempt from taxation.

The Board concluded that the 2006 actual value of the subject property should be reduced to \$23,296,686.00.

ORDER:

Respondent is ordered to reduce the 2006 actual value of the subject property to \$23,296,686.00.

The Denver County Assessor is directed to change his records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of C.R.S. section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the Respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of C.R.S. section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Colo. Rev. Stat. § 39-8-108(2) (2007).

DATED and MAILED this 18th day of March 2008.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

James R. Meurer

James R. Meurer

Sondra W. Mercier

Sondra W. Mercier

This decision was put on the record

MAR 18 2008

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Heather Heinlein

Heather Heinlein

