

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD
EQUALIZATION AND REVIEW
07 PTC 209

IN THE MATTER OF:)
APPEAL OF SAS INSTITUTE INC.) **FINAL DECISION**
from the decision of the Wake County)
Board of Commissioners concerning the)
discovery and assessment of certain)
tangible personal property.)

THIS MATTER was heard by the North Carolina Property Tax Commission (“the Commission”) sitting as the state Board of Equalization and Review in the city of Raleigh, Wake County, North Carolina, at its regularly scheduled Session of Hearings on Thursday, December 13, 2007 pursuant to the appeal of SAS Institute, Inc. from the discovery and assessment of certain tangible personal property.

Chairman Terry L. Wheeler presided over the hearing with Vice Chair Anthony L. Young and Commission members R. Bruce Cope, Wade F. Wilmoth and Juleigh Sitton participating.

C. B. McLean Jr., attorney at law, represented SAS Institute Inc. at the hearing. Shelley T. Eason, Deputy County Attorney, represented Wake County at the hearing.

STATEMENT OF THE CASE

At all relevant times, SAS Institute Inc. was and is a North Carolina corporation with its corporate headquarters and principle place of business in Wake County, North Carolina. On 25 November 2002, SAS purchased a Boeing 737 corporate jet from Boeing Corporation. The sale occurred in Charleston, South Carolina. The aircraft was purchased in “green” condition, i.e. without passenger seats, interior walls, and interior furnishings.

Immediately after its purchase, SAS Institute Inc. had the aircraft flown to Louisiana, where it remained for painting until 21 December 2002. On 27 November 2002, SAS contracted with DeCrane to complete the interior of the aircraft. The contract provided that interior upfitting work on the aircraft would be done at the Sussex County Airport in Delaware. On 21 December 2002, SAS Institute Inc. had the aircraft flown from Louisiana to Delaware for upfitting at DeCrane’s facility, where it remained until 23 August 2003. During a routine audit by the Wake County Revenue Department, the County’s auditor “discovered” the corporate jet for tax year 2003. The Wake County Board of Commissioners affirmed the assessment, but relieved the late list penalty imposed on the aircraft.

STIPULATIONS

In the Order of Final Pre-Hearing Conference, the parties stipulated to the following facts:

1. SAS Institute Inc. purchased a jet aircraft in 2002. The aircraft was purchased in "green" condition, without passenger seats, interior walls, and many other interior furnishings.
2. The purchase of the aircraft was completed on 25 November 2002 in Charleston, South Carolina.
3. The aircraft flew from Boeing Field, Washington to Georgetown Field on 27 September 2001, from Georgetown to Boeing Field on 15 October 2002, from Boeing Field to Yakima on 20 November 2002.
4. On 24 November 2002, the aircraft flew from Seattle to Raleigh, NC (RDU), where it spent the night of November 24th. The aircraft was owned by Boeing at this time. On 25 November 2002, the aircraft flew from RDU to Charleston, SC, where the purchase occurred. The aircraft then flew to RDU, where it stayed for approximately 1 hour and 20 minutes. The aircraft then flew to Arcadiana Regional (Louisiana), where it remained for painting from 25 November 2002 to 20 December 2002. On 21 December 2002, it was flown by Boeing to Delaware for the interior to be built and installed by DeCrane.
5. On 27 November 2002, SAS Institute Inc. contracted with DeCrane for DeCrane to complete the interior of the aircraft. The contract provided that work on the aircraft would be done at the Sussex County Airport in Delaware.
6. The aircraft was located at the DeCrane facility in Delaware from 21 December 2002 to 23 August 2003 pursuant to the contract between SAS and DeCrane. The aircraft was not flown during this period. An Airworthiness Certificate for the aircraft was issued on 3 September 2003. The first flight with Dr. Goodnight was on 3 September 2003.
7. A building permit was issued for the construction of the hangar at RDU (Raleigh) to house the aircraft on 16 June 2003.
8. On 1 January 2003, the aircraft was located at Sussex County Airport in the State of Delaware.
9. SAS Institute Inc. did not own or rent a hangar for the aircraft until the hangar at RDU was completed in the third quarter of 2003.
10. The aircraft was not returned to SAS Institute Inc. in North Carolina until after the modifications were completed in August of 2003. The aircraft was located at the

DeCrane facility while modifications were being made. All modifications were made in Delaware.

11. The aircraft was located at Sussex County Airport, Delaware, before, during, and after the January 1st lien date in 2003. It remained at Sussex County Airport until early September of 2003.

12. While the aircraft was in Delaware, from 21 December 2002 until early September of 2003, it was located in the DeCrane facility in Delaware.

13. The Wake County Revenue Department made a "discovery" of the aircraft pursuant to N.C. Gen. Stat. §105-312 for tax year 2003 in 2006. The Wake County Revenue Department notified SAS Institute Inc. of this discovery by letter dated 8 September 2006.

14. SAS Institute Inc. appealed the discovery of the aircraft. By letter from Emmett Curl to Chris Byron, SAS Institute, Inc., Vice-President for Taxation, the County affirmed the discovery, but relieved the late list penalty.

15. At all relevant times, SAS Institute Inc. was, and is, a North Carolina corporation with its principle place of business in Wake County, North Carolina.

16. At all relevant times, SAS Institute Inc. owned and continues to own real property in Wake County, North Carolina.

17. At all relevant times, personal property, including jet aircraft, was exempt from *ad valorem* taxation in the State of Delaware pursuant to Delaware statute. (Title 30, Section 102(a).)

18. On 1 January 2003, the aircraft could not be used as a passenger aircraft because it had no passenger seats, interior walls, or interior furnishings. The aircraft was in Delaware for the purpose of adding these items to the aircraft so that it could be used as a passenger aircraft.

19. All parties are properly before the Commission and have been correctly designated and the Commission has jurisdiction of the parties and of the subject matter.

EVIDENCE

At the hearing, SAS Institute Inc. presented oral testimony of Brian Kent Zuercher, Esq., Assistant General Counsel, Legal Division SAS Institute Inc., Cary, NC; and Phillip David Terry, Aviation Department Manager, SAS Institute Inc. Cary, NC.

At the hearing, SAS Institute Inc. introduced the following documentary exhibits:

1. "Discovery" letter dated 8 September 2006 from Daniel J. McCarty, CPA.

2. List of four letter airport identifiers.
3. Fax from Mike Sanders/David Terry to Terry Schwarz with copies of flight log from 9 September 2001 to (flight #4) to 19 August 2003 (flight #11).
4. Excerpt from contract between SAS Institute Inc. and Boeing.
5. Purchase agreement assignment, aircraft receipt, Bill of Sale, and related documents.
6. Jeppesen trip planning log for the aircraft for November 24th and November 25th, 2002.
7. Aircraft history report showing change in registration from Boeing to SAS Institute Inc. on 27 November 2002.
8. Contract between SAS Institute Inc. and Pats, Inc., doing business as DeCrane Aircraft Systems Integration Group for completion of aircraft interior.
9. Production checklist showing agreed interior modification schedule.
10. DeCrane Aircraft weekly report for week of 22 August 2003.
11. Boeing flight log showing flight from DeCrane to Atlantic City.
12. FAA Registry. Airworthiness date: 3 September 2003.
13. Commencement flight log after delivery to SAS Institute Inc. in airworthy condition.
14. Wake County real estate data screen showing building permits issue date for aircraft hangar of 16 June 2003.
15. Photographs of the interior of the aircraft before and after upfit.
16. Letter from Mr. Marcus D. Kinrade to Mr. Chris Byron, SAS Institute Inc., Vice-President for Taxation dated 29 November 2006.
17. Letter from Mr. Emmett D. Curl to Mr. Chris Byron, SAS Institute Inc., Vice-President for Taxation dated 8 January 2007.
18. Letter from Mr. Chris Byron, SAS Institute Inc., Vice-President for Taxation to Mr. Emmett Curl dated 2 January 2007.

Wake County presented the following documentary exhibits:

1. Excerpt of North Carolina Department of Revenue Business Personal Property Appraisal Manual dealing with Aircraft.
2. Excerpt of Property Tax Listing and Assessing in North Carolina, Joseph S. Ferrell (UNC Press, IOG 2000).
3. Letter from Chris Byron, SAS Institute Inc. Vice-President for Taxation dated 2 January 2007 to Emmett Curl, Wake County Revenue Administrator.
4. Letter from Emmett Curl, Wake County Revenue Administrator dated 8 January 2007 to Chris Byron, SAS Institute Inc. Vice-President for Taxation.

ISSUES PRESENTED

1. Whether Wake County may lawfully assess *ad valorem* taxes for tax year 2003 against the subject aircraft purchased by SAS Institute Inc. on November 25, 2002.
2. What was the legal tax *situs* of the aircraft for tax year 2003?

FROM THE APPLICATION FILED IN THIS MATTER, THE STIPULATIONS AND EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. SAS Institute Inc. purchased the aircraft from Boeing on 25 November 2002.
2. SAS Institute Inc. was the owner of the aircraft on 1 January 2003.
3. On 27 November 2002, SAS Institute Inc. entered into a contract with Pats, Inc., doing business as DeCrane Aircraft Systems Integration Group for completion of aircraft interior.
4. On 1 January 2003, the aircraft was physically located in Delaware, where its interior was being upfitted for SAS Institute Inc.
5. The aircraft was in Delaware for only as long as it took DeCrane to upfit the subject aircraft.
6. DeCrane completed the aircraft interior in late August or early September of 2003. DeCrane did not use the aircraft while it was in Delaware.
7. SAS Institute Inc. has no business offices in Delaware. SAS Institute Inc. made no use of the aircraft while it was being upfitted in Delaware.
8. The FAA classified the aircraft as airworthy as of 3 September 2003.
9. The subject aircraft did not have tax situs in Delaware in 2003.

10. SAS Institute Inc. did not pay property tax on the subject aircraft in any state other than North Carolina in 2003.
11. The subject aircraft had tax situs in Wake County, North Carolina on 1 January 2003.
12. SAS Institute Inc. appealed the subject aircraft's discovery and assessment to the Wake County Board of Commissioners. The Wake County Board of Commissioners affirmed the assessment, but relieved the late list penalty imposed on the aircraft.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COMMISSION CONCLUDES AS A MATTER OF LAW:

1. All property, real and personal, in North Carolina is subject to property tax unless specifically exempted or excluded from taxation by statute or by the North Carolina Constitution. [N.C. Gen. Stat. § 105-274].
2. Tangible personal property is all personal property that is not intangible and that is not permanently affixed to real property. [N.C. Gen. Stat. § 105-273(14)].
3. The owner must list taxable tangible business personal property every year. Situs and value are determined as of 1 January of the tax year. [N.C. Gen. Stat. § 105-285(b)]. Because of its movable nature, the situs of tangible personal property is the owner's domicile (principal place of business) rather than its actual location of January 1 of the tax year. [N.C. Gen. Stat. § 105-304].
4. "Nothing else appearing, tangible personal property may be taxed at its full value by the state of the owner's domicile even though it is frequently taken or sent out of such state during the tax year." In re McLean Trucking Co., 281 N.C. 375, 390, 189 S.E.2d 194, 204 (1972).
5. The burden is on the taxpayer who contends that some portion of his tangible personal property is not within the taxing jurisdiction of his domiciliary state to prove that the same property has acquired a tax situs in another jurisdiction. Billings Transf. Corp. v. County of Davidson, 276 N.C. 19, 170 S.E.2d 873 (1969).
6. The subject aircraft had tax *situs* in Wake County, North Carolina on 1 January 2003, and Wake County may lawfully assess 2003 *ad valorem* tangible personal property taxes against the subject aircraft that SAS Institute Inc. purchased in November of 2002.

THE COMMISSION NOW, THEREFORE, ORDERS, ADJUDGES AND DECREES that Wake County lawfully discovered and assessed 2003 property taxes on the subject aircraft, and the County's assessment is hereby **AFFIRMED**.

NORTH CAROLINA PROPERTY TAX COMMISSION

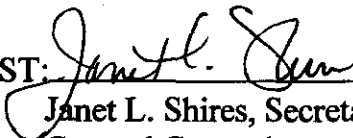


A handwritten signature in black ink, appearing to read "Terry L. Wheeler", is written over a horizontal line.

Terry L. Wheeler, Chairman

Vice Chairman Young and Commission members Cope, Wilmoth and Sitton concur.

ENTERED: March 10, 2008

ATTEST: 
Janet L. Shires, Secretary
General Counsel
Property Tax Commission