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NO. 84207-8

SUPREME COURT OF THE STATE OF WASHINGTON

FLIGHT OPTIONS, LLC,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

RESPONDENT'S ANSWER TO AMICUS CURIAE BRIEF OF NETJETS AVIATION, INC.

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ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION

In its amicus brief, NetJets confuses rather than informs the discussion of the issue in this case. The assessment in this case did not turn on whether the aircraft were owned by a single owner or fractional owners. Nor did it turn on whether the aircraft were owned by Washington residents. The assessment turned on whether Flight Options used the aircraft to provide transportation for compensation.

NetJets' arguments ignore the statutory distinction between personal aircraft and aircraft used by companies providing transportation for hire. This distinction is found in many taxes from property tax, to aircraft fuel tax, to sales and use tax. In each case, various tax consequences stem from whether or not an aircraft is used by air transportation companies. For property taxes, as in other areas, the Legislature has chosen to treat aircraft used in commercial operations differently than personal aircraft. This is a Legislative choice and is not based on constitutional limitations.

The argument that single-owner aircraft would not have a taxable situs in Washington is incorrect. Single-owner aircraft are subject to the aircraft excise tax, which applies to all personal aircraft used in the state for more than 90 days in any 12-month period. The aircraft excise tax is imposed in lieu of property tax and is subject to the same situs requirements as an apportioned property tax. Accordingly, both taxes apply to aircraft that are habitually used in the state.

NetJets' situs arguments also fail to recognize that apportioned property taxes lower the contacts needed to establish a tax situs in a state. The Washington situs cases NetJets cites rely on the "home port" doctrine, which the United States Supreme Court consistently limited to ocean-going vessels during the 20th century and then abandoned completely over 30 years ago in favor of a fair apportionment analysis. Under the fair apportionment analysis, property does not need to be permanently located in a state to acquire a taxable situs. States may tax property as long as the tax bears a reasonable relationship to the benefits and protections provided by the state.

Contrary to NetJets' suggestion, aircraft used in fractional programs are more similar to charter aircraft than those owned by a single individual or business. Thus, it is reasonable for the tax treatment to track the treatment of charter aircraft, which are subject to property tax under RCW 84.12. Because Flight Options' fleet averaged four takeoffs or landings *a day* in Washington, it habitually used the planes in Washington as part of a commercial flying operation similar to a charter company. Therefore, the planes are properly subject to assessment and taxation under RCW 84.12.

II. ARGUMENT

A. Property Habitually Used In A State Acquires A Taxable Situs For Purposes Of Imposing An Apportioned Property Tax.

Under modern fair apportionment analysis, a state may impose an apportioned property tax when the property is habitually used in the state.

See Japan Line, Ltd. v. Los Angeles County, 441 U.S. 434, 445, 99 S. Ct. 1813, 60 L. Ed. 2d 336 (1979) (*citing Braniff Airways v. Nebraska State Bd. of Equalization & Assessment*, 347 U.S. 590, 74 S. Ct. 757, 98 L. Ed. 967 (1954)). The situs arguments NetJets advances are based on common law notions that the United States Supreme Court abandoned more than 30 years ago. *Japan Line,* 441 U.S. at 443. NetJets cites a number of Washington cases from the early 1900s holding that personal property is not subject to tax if it is only in the state temporarily. NetJets Amicus at 4-5. What NetJets fails to recognize is that the holdings in these cases rely on the common law "home port" doctrine announced in *Hays v. Pacific Mail S. S. Co.*, 58 U.S. 596, 15 L. Ed. 254, 17 How. 596 (1854). Under the "home port" doctrine, vessels did not acquire a taxable situs outside of their home port unless they were permanently located in the state. *Japan Line,* 441 U.S. at 442-43. In 1965, this Court recognized that the United States Supreme Court had limited the "home port" doctrine to the taxation of ocean-going vessels. *Alaska Freight Lines, Inc. v. King County*, 66 Wn.2d 360, 364, 402 P.2d 670 (1965). For all other property, the United States Supreme Court employed the fair apportionment analysis, under the Due Process and Commerce Clauses. *Japan Line*, 441 U.S. at 442.

The fair apportionment analysis focuses on whether the tax bears a reasonable relationship to the benefits and protections provided by the state. *Japan Line*, 441 U.S. at 445. Under both the Due Process Clause and the Commerce Clause this test is satisfied if the property is habitually used in the state and the property tax is fairly apportioned. *Id.* at 444-45.

1. The situs cases cited by NetJets rely on federal precedent and do not establish a higher Washington situs standard.

To support its argument that property must be permanently located in the state to be taxable, NetJets cites six cases decided during the first half of the 20th century:

1. *Guinness v. King County*, 32 Wn.2d 503, 202 P.2d 737 (1949);
2. *Suburban Transp. System v. King County*, 160 Wash. 364, 295 P. 124 (1931);
3. *U.S. Whaling Co. v. King County*, 96 Wash. 434, 165 P. 70 (1917);
4. *Pacific Cold Storage Co. v. Pierce County*, 85 Wash. 626, 149 P. 34 (1915);
5. *North American Dredging Co. v. Taylor*, 56 Wash. 565, 106 P. 162 (1910); and
6. *Northwestern Lumber Co. v. Chehalis County*, 25 Wash. 95, 64 P. 909 (1901).

NetJets Amicus at 4-5. All of these cases rely on case law tracing back to the United States Supreme Court's decision in *Hays* that *Japan Line* overruled in 1979.

In *Guiness*, this Court addressed the taxation of an ocean-going yacht and cited to *Morgan v. Parham*, 83 U.S. 471, 21 L. Ed. 302, 16 Wall. 471 (1872), a United States Supreme Court decision affirming the "home port" rule announced in *Hays*. *Guinness*, 32 Wn.2d at 506-07; *see also Japan Line*, 441 U.S. at 442 n 5 (noting that *Parham* reaffirmed the holding in *Hays*). In *Suburban Transportation*, this Court cited *Pacific Cold Storage* for the general rule that the domicile of the owner typically controls the situs of personal property. *Suburban Transportation*, 160

Wash. at 366. Importantly, the Court in *Suburban Transportation* noted that there are exceptions to this rule, such as the central assessment statutes in RCW 84.12. *Id.* at 367.

Pacific Cold Storage cited *North American Dredging* for the general rule that property of a nonresident is not taxable if it is only temporarily present in the state. *Pacific Cold Storage*, 85 Wash. at 629. In turn, *North American Dredging*, decided in 1910, relied on *Northwestern Lumber* for the proposition that the home port of an ocean-going dredger controlled its tax situs.[1] *North American Dredging*, 56 Wash. at 568. Lastly, *Northwestern Lumber*, decided in 1901, relied on the decisions in *Hays* and *Parham* for the proposition that the home port controls unless the vessel is permanently located in the state. *Northwestern Lumber*, 25 Wash. at 96-98.

All of these cases applied federal law; none purported to establish an independent Washington situs standard. As shown above, all of them are ultimately based on the United States Supreme Court's decision in *Hays*. This is confirmed by *Alaska Freight Lines*. In *Alaska Freight Lines*, this Court looked to the federal case law and recognized the fair apportionment trend, but held that it had not been extended to ocean-going vessels. *Alaska Freight Lines*, 66 Wn.2d at 364. If the line of cases cited

[1] *U.S. Whaling* similarly cites to *Northwestern Lumber*, but also includes *North American Dredging* and *Pacific Cold Storage* in a string citation. *US Whaling*, 96 Wash. at 437.

by NetJets established a higher Washington standard, the analysis of the federal case law in *Alaska Freight Lines* would be misplaced.

As such, the holdings in these cases are not relevant for two reasons. First, they are distinguishable under *Alaska Freight Lines* because this case involves aircraft, not ocean-going vessels. Second, the United States Supreme Court's decision to abandon the "home port" doctrine in *Japan Line* casts considerable doubt on the continued validity of these cases. Accordingly, the "home port" doctrine cannot be used to argue that Flight Options' aircraft must have a permanent presence in the state before they can be subject to property tax.

2. Under the federal fair apportionment analysis, states may impose property tax on property habitually used in the state.

In *Japan Line*, the United State Supreme Court reiterated that the fair apportionment analysis applies to the taxation of property moving in interstate commerce. In doing so, the Court reaffirmed that when property is habitually used in a state it acquires a taxable situs under the Due Process and Commerce Clauses. *Japan Line*, 441 U.S. at 444-45. Thus, even property that is only in the state on a temporary and irregular basis can acquire a taxable situs if there are enough contacts to show that the property is habitually used in the state. *Central R.R. Co. of Pennsylvania v. Commonwealth of Pennsylvania*, 370 U.S. 607, 613, 615, 82 S. Ct. 1297, 8 L. Ed. 2d 720 (1962); *see also American Refrigerator Transit Co. v. Hall*, 174 U.S. 70, 72, 81-82, 19 S. Ct. 599, 43 L. Ed. 899 (1899) (approving Colorado tax on rail cars owned by Illinois corporation although cars were not run in fixed numbers, on regular schedules, or on fixed routes).

During the years at issue, Flight Options' fleet made an average of four flights *each day* into or out of Washington. Thus, the aircraft were habitually used in Washington and acquired a taxable situs for property tax purposes.

B. RCW 84.12 Independently Imposes Property Tax On The Property Used By Interstate Transportation Companies.

NetJets asserts that the central assessment statutes in RCW 84.12 do not impose the property tax. NetJets Amicus at 6. This is incorrect. RCW 84.12 and RCW 84.40 independently impose the property tax and have parallel assessment provisions.

> The department of revenue shall annually make an assessment of the operating property of all companies; and … each year shall prepare an assessment roll upon which it shall enter and assess the true and fair value of all the operating property of each of such companies.

RCW 84.12.270.

> All personal property in this state subject to taxation shall be listed and assessed every year, with reference to its value and ownership.

RCW 84.40.020.

> Upon the assessment roll shall be placed after the name of each company a general description of the operating property of the company… following which shall be

> entered the true and fair value of the operating property as determined by the department of revenue.

RCW 84.12.330.

> The assessor shall make an alphabetical list of the names of all persons in the county liable to assessment of personal property, and require each person to make a correct list and statement of such property ... Upon receipt of such statement and list the assessor shall thereupon determine the true and fair value of the property included in such statement and enter one hundred percent of the same on the assessment roll opposite the name of the party assessed.

RCW 84.40.040.

The parallel nature of the assessments is confirmed by the fact that companies assessed under RCW 84.12 do not file personal property statements with the county assessor under RCW 84.40. RCW 84.40.190. Thus, RCW 84.12 is a separate statutory scheme which independently imposes the property tax on operating property used by interstate utility and transportation companies.

C. RCW 84.12 Imposes An Apportioned Property Tax Consistent With Constitutional Limits.

NetJets asserts that RCW 84.12 was not intended to expand amount of property subject to assessment and taxation. NetJets Amicus at 6. This is not correct. As discussed above, apportioned property taxes have different situs requirements because they tax only a portion of the property. Therefore, property may have sufficient contacts to justify an apportioned tax, but not an unapportioned tax. Consistent with the fair apportionment requirements, RCW 84.12.200(12) expressly defines "operating property" to include "a proportion" of "personal property used partly within and partly without the state." This shows Legislature intended to include an apportioned share of any property taxable under the constitution. Moreover, RCW 84.12 was enacted in 1935 at the height of the Great Depression. Therefore, it is unlikely the Legislature would have voluntarily reduced the amount of interstate property subject to tax by setting a statutory situs requirement higher than the constitutional minimum. Accordingly, RCW 84.12 may impose tax on property that would not be subject to an unapportioned property tax.

D. Aircraft Habitually Used In The State Acquire a Taxable Situs, Even If They Are Owned By A Single Individual Or Business.

NetJets maintains that aircraft owned by nonresident individuals or businesses would not be subject to property tax if the aircraft occasionally landed in the state. Amicus Br. at 4. But as explained above, property tax can be imposed when the property is habitually used in the state and the tax is fairly apportioned. Therefore, aircraft owned by a single individual or business *could* be subject to property tax. However, in 1949, the Legislature chose to exempt personal aircraft from property tax and impose an aircraft excise tax instead, similar to the tax imposed on automobiles.[2]

Aircraft not subject to the aircraft excise tax are subject to property tax. RCW 82.48.110. Notably, the Legislature continued to impose

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[2] The aircraft excise tax was explicitly imposed in lieu of the property tax and was initially imposed at one percent of the plane's fair market value. RCW 82.48.110; Laws of 1949, ch. 49, § 3.

property tax on aircraft used to provide transportation for hire.[3] RCW 82.48.100(4). Thus, aircraft used by charter companies and commercial airlines continued to be subject to the apportioned property tax in RCW 84.12.

Like the apportioned property tax under RCW 84.12, the aircraft excise tax applies when aircraft are habitually used in the state. If a plane is used or based in the state for more than 90 days in a 12-month period, it is subject to the aircraft excise tax. RCW 82.48.100(3); Department of Revenue, *Aircraft Tax Business Tax Information* (2011), Appendix A. Thus, personal aircraft are subject to tax when they are habitually used in the state, similar to aircraft used by charter companies and commercial carriers.

E. Aircraft Used In Fractional Aircraft Programs Such As Flight Options Are More Similar To Charter Aircraft Than Personal Aircraft And Are Subject To Property Tax To The Same Extent As Charter Aircraft.

NetJets argues that aircraft in fractional ownership programs should be taxed the same as personal aircraft owned and operated by a single individual or business. This argument ignores the statutory requirement that aircraft used principally in "commercial flying constituting interstate or foreign commerce" are exempt from the aircraft excise tax and subject to the property tax in RCW 84.12. RCW 82.48.110.

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[3] If a personal aircraft is placed with an aircraft management company that charters the plane when the owner is not using it, the property tax applies if the aircraft is principally used to provide charter flights. *See* RCW 82.48.110 (aircraft excise tax does not apply to aircraft principally used in commercial flying).

Thus, when aircraft are used to provide air transportation for hire, the property tax applies. AGO 1961 No. 37 at 5.

Here, Flight Options used the aircraft to provide transportation for hire. *See* Br. of Resp't at 13-17. Indeed, NetJets' own comparison chart reveals almost no difference between its fractional ownership program and its charter program, both of which use the same fleet of aircraft.[4] Like Flight Options, NetJets is considered an "air carrier" by the FAA, which means it is providing air transportation for hire.[5] *See Hanold v. Raytheon Co*, 662 F. Supp. 2d 793, 801 (S.D. Tex., 2009) (Flight Options held to be an "air carrier" transporting passengers or property by aircraft for compensation.) Thus, the fractional program managers are more like charter operators than aircraft management companies.

NetJets argues that fractional owners are no different than an owner who pilots his or her own personal jet or hires a third party to manage and operate the aircraft. However, the record before the Court shows there are numerous differences that make the comparison inapt. While the Court is only concerned with the operations of Flight Options' program in this case, a comparison prepared by Bombardier for its FlexJet One program highlights the differences even more.[6] In the case of a fractional program, participants have access to the entire fleet regardless

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[4] NetJets: Compare the Programs, http://www.netjets.com/NetJets_Programs/Compare_The_Programs.asp (4/21/2011), Appendix B.

[5] NetJets Companies, http://www.netjets.com/about_netjets/netjets_companies.asp (5/3/2011), Appendix C.

[6] FlexJet One, http://www.flexjet.com/Flexjet-One/flexjet_one_factsheet.pdf (5/3/2011), Appendix D.

of whether the "fractionally owned" aircraft is down for maintenance, and participants can use other types of aircraft depending upon their needs for a specific flight. CP 178 ¶ 5.4(d); *see also* FlexJet One, Appendix D-2. So if a fractional owner needed to make a non-stop trip that exceeds the range of the type of aircraft the owner had an interest in, it would not matter. If a typical private aircraft owner needed to fly to Anchorage for a business trip, it would not be possible for the owner's family to use the plane to fly to Disneyland on the same day. A fractional owner, however, could schedule simultaneous flights as long as she had enough flight hours left in her account. CP 178 ¶ 5.8. Another difference is that a private aircraft owner must pay for the cost of ferrying his aircraft from its current location to the departure point, whereas fractional programs typically do not charge for the cost of ferrying the aircraft to the departure point. CP 177 ¶ 5.4(c); *see also* NetJets: Compare the Programs, Appendix B-3; FlexJet One, Appendix D- 2.

Furthermore, fractional programs impose limitations not faced by private owners. Private owners may customize the interior of their planes and the exterior paint schemes to accommodate their tastes, but fractional owners may not. CP 438-40, 443, 491. Private owners do not need to worry about the availability of their planes to make a trip outside of North America, whereas fractional owners are restricted in their ability to use program planes outside of North America.[7] Additionally, in Flight

[7] *See* CP 175 ("all requests for flights originating or terminating more than 1,000 statute miles outside of the contiguous United States shall be subject to availability").

Options' program, fractional owners cannot use their own pilots or fly the aircraft themselves; they must use Flight Options' pilots. CP 382-83.

These comparisons demonstrate that fractional owners are more akin to charter passengers than private aircraft owners. Accordingly, NetJets' argument that aircraft used in fractional programs should be accorded the same tax treatment as personally owned aircraft is unfounded.

III. CONCLUSION

For the foregoing reasons, the Court should affirm the Court of Appeals decision holding that the aircraft in Flight Options' fleet are subject to the apportioned property tax in RCW 84.12.

RESPECTFULLY SUBMITTED this 4th day of May, 2011.

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APPENDIX
A

Aircraft Tax

BUSINESS TAX INFORMATION

This publication is designed to help you understand the legal requirements of an aircraft owner or pilot in Washington State. It provides general information about registration and taxes for aircraft. This information is current at the time of publication, but future changes may invalidate some of the information. This publication does not cover every aspect and is intended for general informational purposes only; it does not alter or supersede any administrative regulations or rulings issued by the Department of Revenue.

Department of Revenue
Washington State

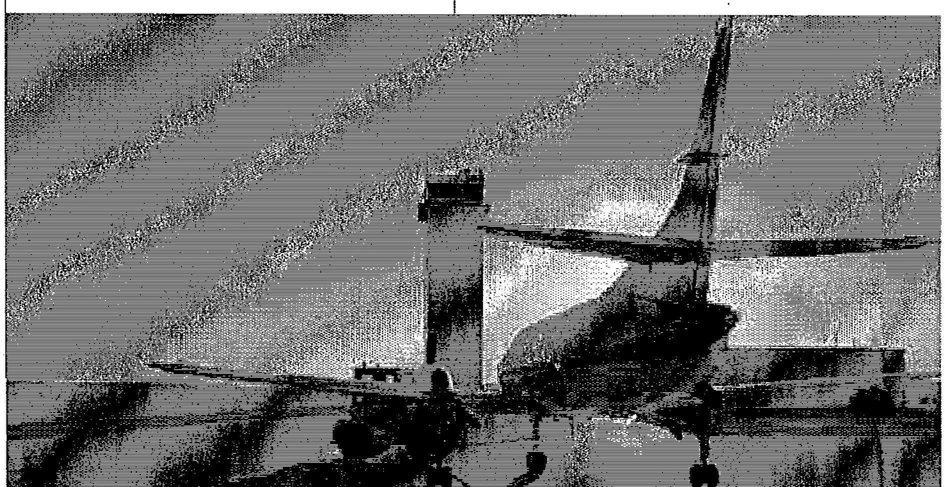
SALES AND USE TAX

Most Washington residents are familiar with sales tax, which applies to retail sales in this state. But few are familiar with use tax, which applies to the use of goods in Washington when sales tax has not been paid. Use tax is calculated at the same rate as sales tax. The intent is that articles purchased at retail for use in this state are subject to either sales or use tax, but not both.

As a general rule, sales or use tax is due on aircraft unless a specific exemption applies. Sales tax is due on the selling price. If sales tax was not paid, use tax is due on the value of the aircraft at the time of first use in Washington.

If you traded in an aircraft when you purchased your present aircraft, the amount subject to sales or use tax is reduced by the value of the trade-in. If you have already paid sales or use tax in another state, you are entitled to a credit for that amount against the amount of use tax due in Washington.

If your aircraft is home-built, use tax is due on the value of the materials used to build it. You may receive credit against the use tax for any sales tax you paid on the materials.



SALES OR USE TAX IS DUE ON:
NONEXCLUSIVE LIST

- Aircraft for personal use
- Aircraft for charter scenic tours or other guided excursions
- Aircraft for any business purpose, other than interstate or foreign transportation for hire (see exemptions)
- Aircraft for flying lessons

SALES OR USE TAX IS NOT DUE ON:
TAX EXPEMPTIONS

- Aircraft acquired by gift if the donor paid sales or use tax on the aircraft.
- Aircraft brought into Washington by nonresidents for their use or enjoyment while temporarily within this state. Temporarily means no more than 90 days in any continuous 12 month period.
- Aircraft purchased or used primarily (more than 50 percent of the time) for interstate or foreign commerce by transporting persons or property for hire.
- Aircraft purchased exclusively for the purpose of renting or leasing on a bare-rental basis, i.e., without a pilot. In this case, the lessor must collect retail sales tax on the lease payments from the lessee.

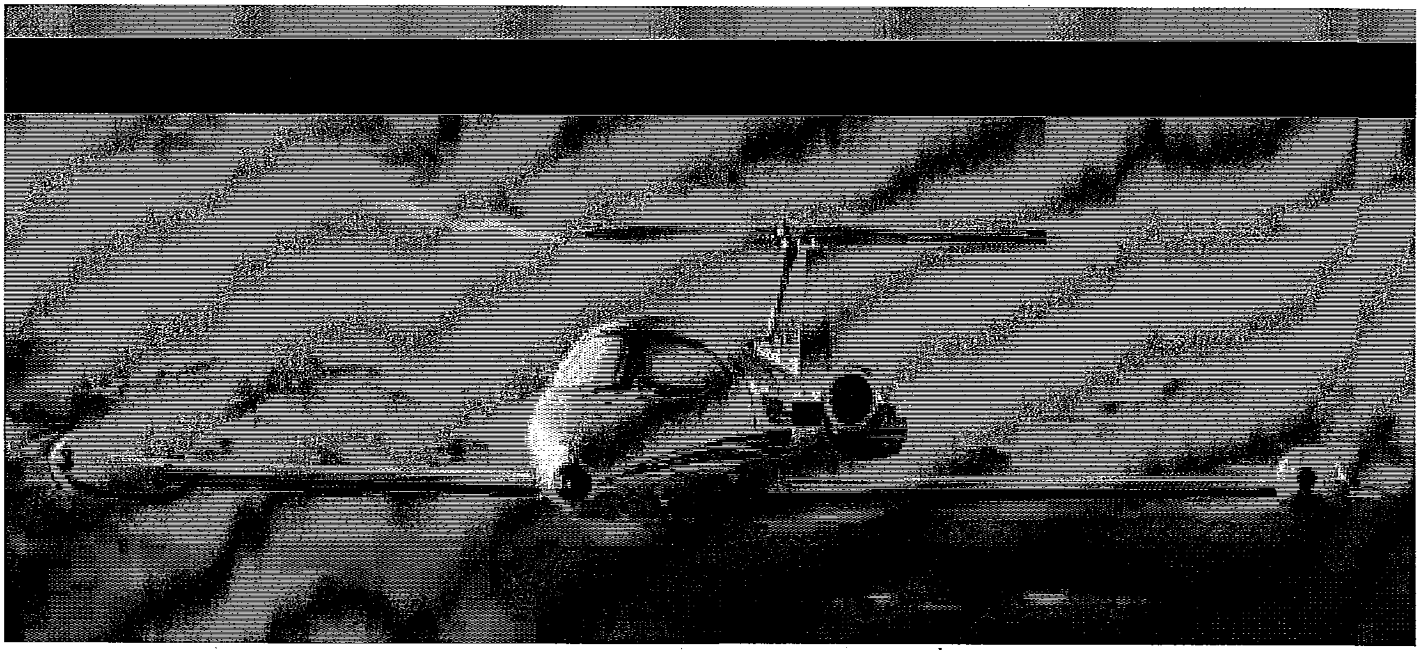
PAYMENT OF TAX

If you bought your aircraft from a Washington dealer, you should have paid sales tax at the time of the purchase. If you bought your aircraft in another state or from a private party, you may not have paid sales tax. In this case, you are liable for use tax unless one of the exemptions apply.

Use tax is paid at a Department of Revenue office. Once paid, the Department will issue a Declaration of Use Tax. This Declaration is required to complete the state registration process with the Department of Transportation.

FEDERAL REGISTRATION

Every pilot operating an aircraft in Washington must have the appropriate certificate, permit, license, or rating issued by the Federal Aviation Administration (FAA). In addition, all aircraft must have the appropriate certificate, permit, or license and a current registration certificate issued by the FAA in order to be operated in this state.



STATE REGISTRATION

The Aviation Division of the Department of Transportation (DOT) administers the state aircraft registration program, as well as the aircraft excise tax.

Every aircraft must be registered with DOT unless the aircraft meets one of the exceptions listed. The aircraft excise tax is due every year during the month of January.

If you are new to Washington, you have 90 days after becoming a resident to register your aircraft.

Upon purchasing an aircraft, Washington residents have 30 days to register their aircraft.

New registrants must first pay any sales or use taxes due on the aircraft to the Washington State Department of Revenue. They will issue you a Declaration of Use Tax when your tax obligation has been satisfied.

REGISTRATION EXCEPTIONS

Registration is not required for an aircraft that is:

- Owned by and used exclusively in the service of the state or federal government.
- Registered under the laws of a foreign country.
- Owned by a nonresident and registered in another state; provided the aircraft remains in the state no more than 90 days in any continuous 12 month period.
- Engaged principally in commercial flying constituting interstate or foreign commerce.
- Owned by a commercial manufacturer and operated for test or crews training purposes.
- Held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer.

AIRCRAFT EXCISE TAX

Aircraft not required to be registered with DOT are exempt from the aircraft excise tax. All other aircraft are subject to the tax. The amount of tax applicable to the various types of aircraft are as follows:

Single engine fixed wing	$ 65
Small multi-engine fixed wing	$ 80
Large multi-engine fixed wing	$ 95
Turboprop multi-engine fixed wing	$115
Turbojet multi-engine fixed wing	$140
Helicopter	$ 90
Sailplane	$ 35
Lighter than air	$ 35
Home-built	$ 35

Application for aircraft registration, and payment of the aircraft excise tax are made directly to the Aviation Division of the DOT.

PERSONAL PROPERTY TAX

Aircraft that are exempt from the aircraft excise tax and operate in an "airplane company" are subject to personal property tax. An "airplane company" uses aircrafts to transport people or property for compensation. Airplane companies are assessed by the Department of Revenue and the tax is collected by county treasurers.

For more information about:

Personal Property Tax
Jessica Griffith
Air Transport Appraiser
(360) 534-1417
FAX (360) 534-1380
jessicag@dor.wa.gov

FOR MORE INFORMATION

Sales or use taxes

Contact your local Department of Revenue office or the Telephone Information Center at 1-800-647-7706.

Or write to:

Taxpayer Information and Education
Washington State
Department of Revenue
Post Office Box 47478
Olympia, Washington 98504-7478
FAX (360) 705-6655
http://dor.wa.gov

Registration or aircraft excise tax:

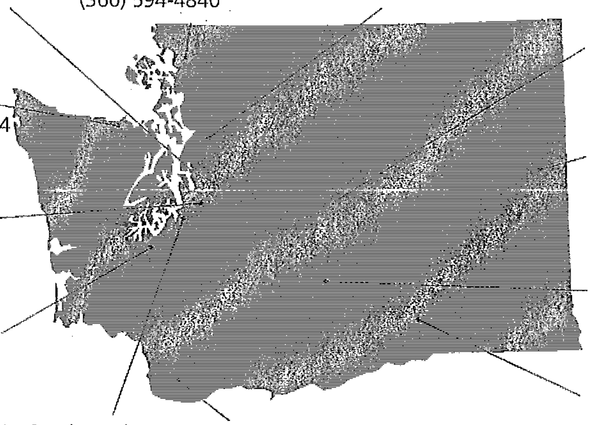
Contact the Aviation Division of the Department of Transportation at (360) 651-6300 or 1-800-552-0666.
Or write to:

WSDOT Aviation Division
18204 59th Drive NE, Suite B
Arlington, Washington 98223
http://wsdot.wa.gov/Aviation/

For FAA registration, call (425) 227-2813 or 1-800-354-1940, or write to:

Federal Aviation Administration
Flight Standards District Office
1601 Lind Avenue SW, Suite 260
Renton, Washington 98055-4056

LOCAL OFFICE LOCATIONS



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Department of Revenue
Washington State

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APPENDIX
B

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The Marquis Jet Card is the only jet card that gives you access to NetJets' world-class fleet. It is the ideal solution for individuals or businesses who fly less than 50 hours per year, prefer a short-term commitment, or want to first try the superior safety, service and reliability of NetJets.

Fractional Aircraft Ownership	Marquis Jet Card
AIRCRAFT TYPES 5 Light Cabin Including the Cessna Citation Bravo (available only in Europe), Cessna Citation V Ultra, Hawker 400XP, Cessna Citation Encore+/Encore, and the Cessna Citation XLS/Excel. 4 Midsize Cabin Including the Hawker 900XP/800XP, Cessna Citation Sovereign, Cessna Citation X, and the Gulfstream G200. 4 Large Cabin Including the Dassault Falcon 2000EX/2000, Gulfstream G450/G400, Dassault Falcon 7X (available only in Europe), and Gulfstream G550/GV. Explore The NetJets Fleet ▸	**AIRCRAFT TYPES** 4 Light Cabin Including the Cessna Citation V Ultra (25 and 50 hour cards), Hawker 400XP, Cessna Citation Encore+/Encore, and the Cessna Citation XLS/Excel. 4 Midsize Cabin Including the Hawker 900XP/800XP, Cessna Citation Sovereign, Cessna Citation X, and the Gulfstream G200. 2 Large Cabin Including the Dassault Falcon 2000EX/2000, and the Gulfstream G450/G400.
GUARANTEED RESPONSE TIME 4-10 hours based on share size and aircraft type.	**GUARANTEED RESPONSE TIME** 10 hours except for departures before 10 a.m. (departures before 10 a.m. must be booked by 6 p.m. the day prior).
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2.5-year commitment for midsize cabin aircraft.

3-year commitment for large cabin aircraft.

MINIMUM COMMITMENT
1-year commitment for 25-hour cards.

15-month commitment for 50-hour cards.

PEAK PERIOD DAYS*
10 peak period days per calendar year.

48 hour notice for booking on peak period days.

Fly on the aircraft type you own.

*Peak Period Days are typically days surrounding holidays and special events when the anticipated demand for aircraft is particularly high. For flights on these days, we may move your departure time by three hours in either direction in both the NetJets Fractional Aircraft Ownership program and the Marquis Jet Card program.

PEAK PERIOD DAYS*
20 peak period days per calendar year.

120 hours notice for booking on peak period days.

Fly on the aircraft type for which you own a Card or a mission-capable aircraft within the same category as the aircraft for which you own a Card:

- Category I - Citation V Ultra, Hawker 400XP, Citation Encore+ fleet, Citation XLS fleet
- Category II - Hawker 900XP fleet, Citation Sovereign, Citation X, Gulfstream G200
- Category III - Falcon 2000EX fleet, Gulfstream G450 fleet

If downgraded, exchange is on a dollar-for-dollar basis.

FERRY FEES (AIRCRAFT POSITIONING CHARGES)*
None within the Collective Service Area or when flying between the Collective Service Area and many of the most popular international destinations.*

*NetJets U.S. Owners and Marquis Jet Card Owners can fly ferry free both within the Collective Service Area (comprised of the continental United States and select cities in the Canadian provinces of Ontario and Quebec)and between the Collective Service Area and the specific ferry waiver zone for the aircraft type owned. Applicable International Fees and Crew Fees are not waived. Restrictions apply. See the NetJets Ferry Waiver Program brochure for complete details.

FERRY FEES (AIRCRAFT POSITIONING CHARGES)*
None within the Collective Service Area or when flying between the Collective Service Area and many of the most popular international destinations* except when traveling on peak period days or prior to 9:00am the day after.**

**The Peak Period Day Ferry Waiver restriction does not apply to Gulfstream G450/G400/GIV-SP Card Owners.

Explore NetJets Fractional Aircraft Ownership
Explore The Marquis Jet Card Program

APPENDIX
C

NETJETS®

Call us at 877-356-5823
Request Information ›
Click here for Live Support ›

Print this page
Email this page

View The NetJets Difference Video

BOOKS FOR DOWNLOAD

- Aircraft Selection Guide
- The Buyer's Guide to Fractional Aircraft Ownership
- Private Aviation 101

NETJETS COMPANIES

NetJets Aviation, Inc. - All aircraft offered by NetJets in the United States are operated by NetJets Aviation. Operations center located in Columbus, OH.

NetJets Europe - All aircraft offered by NetJets Europe are operated, maintained, and crewed by NetJets Transportes Aéreos, SA, an EU Carrier. Operations center located in Lisbon, Portugal.

NetJets Middle East - NetJets has an affiliation with the provider of the NetJets Middle East Program. Operations center located in Riyadh, Saudi Arabia.

Executive Jet® Management - Executive Jet Management offers on-demand air charter services, charter aircraft management, and turnkey aircraft management services. Operations center located in Cincinnati, OH.

Marquis Jet® Partners, Inc. - Marquis Jet® Partners, Inc. is a wholly owned subsidiary of NetJets Inc. and sells the Marquis Jet Card®. Marquis Jet Card flights are operated by NetJets Aviation under its 14 CFR Part 135 Air Carrier Certificate.

NetJets Inc. is a Berkshire Hathaway company.

All fractional aircraft offered by NetJets® in the United States are managed and operated by NetJets Aviation, Inc. Executive Jet® Management, Inc. provides management services for customers with aircraft that are not fractionally owned, and provides charter air transportation services using select aircraft from its managed fleet. Both of these operating companies are wholly owned subsidiaries of NetJets Inc. All fractional aircraft offered by NetJets Europe are operated, maintained, and crewed by NetJets Transportes Aéreos, SA, a Portuguese/EU Air Carrier. NetJets has an affiliation with the provider of the NetJets Middle East Program. Marquis Jet® Partners, Inc. is a wholly owned subsidiary of NetJets Inc. and sells the Marquis Jet Card®. Marquis Jet Card flights are operated by NetJets Aviation under its 14 CFR Part 135 Air Carrier Certificate.

APPENDIX
D

THE BEST OF TWO WORLDS

Welcome to a new class of private aviation. With our proven expertise in manufacturing, maintaining and managing aircraft, we deliver intelligent, industry-leading aircraft management solutions that match your business and personal travel needs.

Enjoy all the advantages of owning your own aircraft, plus all the benefits of fractional jet ownership, including access to the entire Flexjet* fractional fleet. Fly on your aircraft 365 days a year, with no worry about downtime. Use multiple aircraft on the same day. Fly on smaller or larger aircraft as needed. Plus, take advantage of the potential for tax depreciation benefits† and guaranteed revenue via lease-back to Flexjet.

No matter how many hours a year you fly, Flexjet One* delivers the perfect travel solution. If you fly 300 or more hours per year, Flexjet One whole-aircraft ownership provides the ideal answer. For those who fly as few as 50 hours a year, Flexjet One partial aircraft ownership offers a full range of ownership/lease-back advantages.

SUPERIOR ACCESS, SERVICE EXCELLENCE

As a Flexjet One owner, you enjoy access to the entire Flexjet fractional fleet of Learjet* and Challenger* business aircraft – the youngest, fastest and most reliable fractional fleet in the industry. In addition, you benefit from our renowned customer service and superior Flexjet program features and flexibility.

LOWER COST PER OCCUPIED HOUR

Flexjet One delivers a comprehensive and financially compelling aircraft management solution. Purchase a whole Learjet or Challenger aircraft, place it in the Flexjet One program and reap the benefits of the industry's most unique aircraft management solution. Compared with traditional aircraft management, Flexjet One offers most owners a lower cost per occupied hour. In addition, unlike traditional programs, Flexjet One guarantees revenue throughout your contract by allowing you to lease back unused hours.

INNOVATIVE TRIP PRICING

Flexjet One partial aircraft owners qualify for Round Trip Pricing, which can result in a price reduction of up to 15% on one- or two-day quick-turnaround trips. Flexjet One full aircraft owners qualify for Efficient-Trip Pricing, our industry-first feature that can result in savings of up to 20% off your total hourly rate. Both programs offer the potential to dramatically reduce your costs, depending on your typical flying patterns.

FLEXJET ONE PARTIAL AIRCRAFT OWNERSHIP

Enjoy the benefits of increased share ownership while also taking advantage of guaranteed lease-back revenue with our exclusive partial aircraft ownership program. From available inventory, purchase a minimum of 75 hours up to 775 hours and lease back a portion of your ownership to Flexjet. You use at least 50 hours or any amount above that, in 25-hour increments, and we manage the remainder of your ownership interest. For example, you purchase 600 hours on the aircraft of your choice, use 200 hours and lease back 400 hours to us. We handle all the details, and guarantee you revenue for those 400 hours.

LEAVE THE DETAILS TO US

With Flexjet One, you avoid the typical start-up costs of whole aircraft ownership. You benefit from predictable expenses while we manage details such as crews, hangaring and maintenance. That leaves you free to focus on where you are going, not on how you are going to get there.

FLEXJET ONE
BY BOMBARDIER

SAFETY IS OUR HIGHEST CALLING

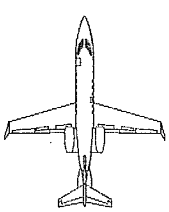
At Flexjet, we make no compromises on safety. From our Bombardier* aircraft, equipped with advanced safety technology, to superior aircraft maintenance and pilot training, our commitment to safety is unmatched. We were the first fractional ownership program to comply with the industry's most stringent safety measurement, the Air Charter Safety Foundation's (ACSF) Industry Audit Standard.

SOLUTIONS DESIGNED FOR YOU

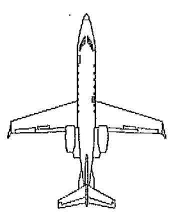
We focus on one thing: being the best at providing access to the exact solution for your travel requirements. With the industry's only complete portfolio of private jet travel options[‡] we are committed to excellence and professionalism at every level. Our passion for aviation in every aspect of our business makes us your best choice for value, quality and customer service. Please call 1-800-FLEXJET (353-9538) to talk with an aviation expert about a solution designed just for you.

Your Flexjet One Advantage	Traditional Aircraft Management
Cost-Efficient Take advantage of lower cost-per-occupied hour vs. traditional aircraft management.	**Costs Not Fixed** Delivers unpredictable operating expenses.
Full Availability Enjoy 365-day access to your jet and the entire Flexjet fractional fleet.	**Restricted Availability** Requires you to charter should you need additional aircraft.
No Downtime No need to worry about maintenance or other logistical issues.	**Subject to Downtime** Prevents access to your aircraft during maintenance.
Multiple Aircraft Use up to five aircraft – and more than one aircraft type – on any given day.	**Provides No Backup** Allows access only to the aircraft you own.
Revenue Potential Earn guaranteed revenue via lease-back.	**Uncertain Revenue Potential** Provides no revenue guarantee.
Ferry Fee Waivers No repositioning fees within Primary and Secondary Service Areas.	**Aircraft Movement Costs** Compels you to pay the expenses to ferry your aircraft.
Upgrades and Downgrades Guaranteed access to different aircraft types for specific missions.	**No Access to Closed Fleet** May require you to place your aircraft in the open charter market.
Closed Fleet Your aircraft will be flown exclusively within the Flexjet fractional fleet.	
Worry-Free Let us handle all management details, or you may opt for full operational control.	
Predictable Operating Costs We take care of all routine and unexpected costs. Your costs set by contract.	
Aviation Expertise Industry-leading pilots and maintenance program.	

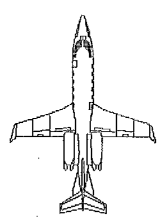
FLEXJET ONE FLEET



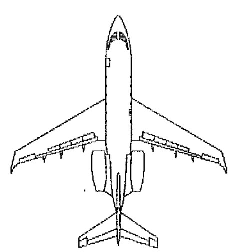
Learjet 40* XR*
Passenger Capacity: 6
Max. Operating Range: 1,785 sm
Normal Cruising Speed: 515 mph
Baggage Capacity: 65 ft^3



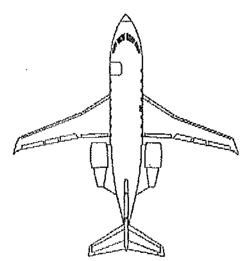
Learjet 45* XR*
Passenger Capacity: 8
Max. Operating Range: 2,115 sm
Normal Cruising Speed: 515 mph
Baggage Capacity: 65 ft^3



Learjet 60* XR*
Passenger Capacity: 7
Max. Operating Range: 2,603 sm
Normal Cruising Speed: 515 mph
Baggage Capacity: 48 ft^3



Challenger 300*
Passenger Capacity: 8
Max. Operating Range: 3,582 sm
Normal Cruising Speed: 528 mph
Baggage Capacity: 106 ft^3



Challenger 605*
Passenger Capacity: 12
Max. Operating Range: 4,300 sm
Normal Cruising Speed: 528 mph
Baggage Capacity: 115 ft^3

1-800-Flexjet (353-9538) • Flexjet.com

FRACTIONAL OWNERSHIP | JET CARDS | CHARTER BROKERAGE | WHOLE AIRCRAFT MANAGEMENT

FLEXJET BY BOMBARDIER

*Registered or unregistered trademarks of Bombardier Inc. or its subsidiaries.
[†]Consult your tax advisor to determine deductibility and tax implications.
[‡]Flexjet acts as an agent for the customer for the Flexjet charter jet card and charter brokerage programs in arranging transportation operated under Part 135 by U.S. air carriers. 10-BOMFLE-29731110

NO. 84207-8

SUPREME COURT
STATE OF WASHINGTON

FLIGHT OPTIONS LLC, Petitioner, v. STATE OF WASHINGTON, DEPARTMENT OF REVENUE, Respondent.	DECLARATION OF SERVICE

I, Candy Zilinskas, state and declare as follows:

I am a citizen of the United States of America and over 18 years of age and not a party to this action. On May 4, 2011, I provided a true and correct copy of Respondent's Answer to Amicus Curiae Brief of Netjets Aviation Inc. and this Declaration of Service to be served electronically by email and via U.S. mail through Consolidated Mail Service with proper postage affixed to:

Scott M. Edwards, edwardss@lanepowell.com
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101-2338

Norman Bruns and Michelle DeLappe
nbruns@gsblaw.com
mdelappe@gsblaw.com
Garvey Schubert Barer
1191 Second Avenue, Suite 1800
Seattle, WA 98101-2939

ORIGINAL

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 4th day of May, 2011, in Tumwater, Washington.

Candy Zilinskas

Candy Zilinskas, Legal Assistant