

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
COMBINED CONTRACT SERVICES, INC.	:	DECISION
for Revision of a Determination or for Refund	:	DTA No. 812826
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1989	:	
through August 31, 1991.	:	

Petitioner Combined Contract Services, Inc., 218 North Jefferson Street, Room #100L, Chicago, Illinois 60606-1112, filed an exception to the determination of the Administrative Law Judge issued on December 14, 1995. Petitioner appeared by Robert N. Swetnick, Esq. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Brian J. McCann, Esq., of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation filed a brief in opposition. Petitioner's request for oral argument was withdrawn.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether the Airline Deregulation Act of 1978¹ (49 USC Appendix § 1301 et seq.) preempts New York State from imposing a sales tax on receipts from the sale of protective and detective services to an airline.

¹Hereinafter "ADA." The ADA of 1978 was re-enacted without substantive change in 1994 (Pub L 103-272, § 1[a]). Citations in this determination are to the law in effect at the time of the assessment, i.e., prior to 1994.

II. Whether, if the sales tax is preempted by Federal law, petitioner is liable for moneys collected as sales tax but not remitted to the State.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for findings of fact "2" and "6" which have been modified. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

The Division of Taxation ("Division") and petitioner Combined Contract Services, Inc. ("petitioner") executed a stipulation of facts on February 16, 1995, which have been incorporated herein.

We modify finding of fact "2" of the Administrative Law Judge's determination to read as follows:

Petitioner is a corporation with a principal office in Chicago, Illinois. The Division conducted a sales tax audit of petitioner's business for the period March 1, 1989 through May 31, 1992. The Division requested from petitioner all books and records pertaining to its sales and use tax liability including journals, ledgers, sales invoices, purchase invoices, cash register tapes, Federal income tax returns and exemption certificates. Petitioner's sales records were adequate for a detailed audit. A detailed audit of sales was performed. Petitioner's sales as reported were accepted.²

During the audit period, petitioner provided certain services to American Airlines at La Guardia and Kennedy International Airports in New York. These services constituted protective services within the meaning and intent of Tax Law § 1105(c)(8) and Administrative Code of the City of New York § 11-2040(a). As noted earlier, a review of petitioner's sales invoices revealed that petitioner had collected sales tax on receipts from the sale of protective services to American Airlines but had not remitted the tax collected to New York State. The amount of the sales tax collected and not remitted is \$133,158.94.

2

We modified finding of fact "2" of the Administrative Law Judge's determination to more fully reflect the record.

The Division issued to petitioner a Notice of Determination, dated February 22, 1993, assessing tax due of \$133,158.94 for the period March 1, 1989 through August 31, 1991, plus penalty and interest.

Following a Conciliation Conference, the Division issued a Conciliation Order (CMS No. 130592) to petitioner, dated February 11, 1994, sustaining the Notice of Determination.

We modify finding of fact "6" of the Administrative Law Judge's determination to read as follows:

Petitioner filed a petition protesting the Notice of Determination on May 10, 1994. The primary defense to the assessment is that the ADA preempts the taxation by the states, of security or protective services provided to airlines.³

DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge concluded that because of the exception provided by 49 USC Appendix § 1513(b), the provisions of 49 USC Appendix §§ 1305 and 1513(a) do not preempt the imposition of sales tax under Tax Law § 1105(c)(8). The Administrative Law Judge concluded that the sales tax imposed here was a sales tax imposed on services purchased by the airline and "has no more than a tangential relationship to the airline's rates, routes and services . . ." (Determination, conclusion of law "B").

The Administrative Law Judge also concluded that petitioner, who acted as a trustee for the State in collecting tax money, was liable for the sales taxes which it collected from American Airlines and failed to remit to the State of New York (Tax Law §§ 1132[a], 1137[a]) (Determination, conclusion of law "C").

ARGUMENTS ON EXCEPTION

Petitioner took exception to conclusions of law "B" and "C," raising the same arguments presented to the Administrative Law Judge. Petitioner argues that 49 USC Appendix § 1305 preempts the Division from imposing sales tax on the security functions of air carriers; that the

3

We modified finding of fact "6" of the Administrative Law Judge's determination to more concisely state the facts in the record.

taxes at issue are not permitted by 49 USC Appendix § 1513(a) which prohibits the taxation of the carriage of persons traveling in air commerce or the sale of air transportation; and that remittance of the tax collected by petitioner would be an unjust windfall for the State of New York.

The Division, in opposition, argues in support of the Administrative Law Judge's determination.

DECISION

We affirm the determination of the Administrative Law Judge, who has fully and fairly considered and ruled on the issues presented, for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Combined Contract Services, Inc. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Combined Contract Services, Inc. is denied; and
4. The Notice of Determination, dated February 22, 1993, is sustained.

DATED: Troy, New York
July 31, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner