STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
HUDSON GENERAL CORPORATION	:	
For Revision of a Determination or for Refund of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law for the Period March 1, 1996 through May 31, 1996.	:	DECISION DTA NOS. 818179 AND 818180
In the Matter of the Petition	:	
of	:	
HUDSON GENERAL LLC	:	
For Revision of a Determination or for Refund of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law for the Period June 1, 1996 through November 30, 1998.	:	

Petitioners Hudson General Corporation, 111 Great Neck Road, Great Neck, New York 11022-0355 and Hudson General LLC, 111 Great Neck Road, Great Neck, New York 11022-0355, filed an exception to the determination of the Administrative Law Judge issued on June 6, 2002. Petitioners appeared by Gary J. Gleba, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michael P. McKinley, Esq., of counsel).

Petitioners filed a brief in support of their exception and the Division of Taxation filed a brief in opposition. Petitioners filed a reply brief. Oral argument, at petitioners' request, was heard on January 15, 2003 in Troy, New York.

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

ISSUE

Whether petitioners' purchases of air cargo container loaders were exempt from sales tax under Tax Law § 1115(a)(21).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for findings of fact "8" and "16" which have been modified. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

During the periods in issue, Hudson General Corporation and its successor, Hudson General LLC, (collectively "Hudson General" or petitioners) engaged in the business of servicing commercial aircraft at John F. Kennedy International Airport ("JFK") and LaGuardia Airport in New York State. Hudson General operated under contract with various commercial airlines. All of the aircraft serviced by Hudson General were commercial aircraft located at JFK and LaGuardia Airports.

Among the services provided by Hudson General during this period were deicing, refueling, heating and air conditioning and installing, loading and offloading of baggage and cargo.

During the period at issue, Hudson General purchased cargo container loaders manufactured by FMC Corporation. The loaders were used exclusively to provide baggage handling services for commercial aircraft. Hudson General used various types of loaders during the audit period to install, load and offload baggage and cargo onto and off of commercial

aircraft. One type of loader is referred to as a belt loader. A belt loader is used to load and unload loose baggage and cargo. Hudson General paid sales tax on its purchases of belt loaders as well as on several other types of property used to transport luggage in and around the ramp area of the airport, including baggage tugs, baggage carts, baggage tractors, dollies, transporters, pick-up trucks and vans.

A second type of loader used by Hudson General was a cargo container loader or pallet loader. Through the use of a scissors mechanism, the loaders raised and lowered the cargo containers between the ground transporter on the tarmac and the aircraft's cargo bay door. The loaders were used exclusively to install in and remove from commercial aircraft air cargo containers or containerized pallets collectively known as unit load devices ("ULD's"). The air cargo containers and pallets are owned by the airlines. Forklifts or other loading equipment is not allowed to be used for installing and removing cargo containers and containerized pallets because of safety considerations.

The Commander 15 and 30 loaders do not attach to the aircraft. The MLD-60 main deck loader attaches to the aircraft for loads of 80,000 pounds. The physical linkage takes place when large hooks in the front of the MLD-60 loader are placed into holes in the aircraft's cargo bay doorsill.

Once the ULD has been packed at the terminal, it is transported, usually on a dolly, to the loader which is positioned near the aircraft. The dolly is brought alongside the loader, and the locks on the dolly, which secure the ULD, are released. With a slight push, the ULD slides across the dolly's rollers onto the elevator of the loader. Thereafter, the rollers on the elevator take hold of the container and pull it onto the elevator.

The loader consists of an elevator and a bridge. Once the ULD has been transferred onto the elevator, a scissor lift raises the elevator, with the ULD, to the level of the loader's bridge which is at the same level as the cargo bay door. Through a series of rollers, the container is transported to the bridge. Then, the ULD is transferred, by a powered roller system on the bridge, to the aircraft's cargo bay doorway. The loader is not inserted inside the aircraft's cargo bay.

We modify finding of fact "8" of the Administrative Law Judge's determination to read as follows:

> Once it is inside of the aircraft's cargo hold, the ramp service agent on the bridge of the loader slides forward the loader's control platform so that he is able to open a door in the fuselage of the aircraft and gain access to the aircraft's own controls. The airplane's own controls are used to maneuver the ULD when it is inside of the airplane. The ULD is moved to its final position inside the airplane by the airplane's internal powered roller system. Through the use of a locking mechanism that hooks to the lip of the cargo container, the ULD is secured in its final position.[1]

The cargo containers are placed in the aircraft according to the directions on a load sheet which is prepared by an operation agent. The load sheet is an integral part of flying the aircraft because the captain sets certain controls according to the load sheet. The load sheet is designed to keep the aircraft level and avoid an up or down pitch. The minimum consequence of an up or down pitch would be an increased use of fuel and flight time. The maximum consequence would be a crash.

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[1]We modify finding of fact "8" to more accurately reflect the record.

Aircraft seldom fly without cargo containers. They will occasionally fly with cargo containers that have not been filled in order to balance the container inventory from one location to another.

The baggage handling process includes the loading and unloading of aircraft and consists of four steps: (1) packing the ULD; (2) transporting the ULD between the terminal and the aircraft; (3) accessing the cargo bay doorway; and, (4) fitting the ULD into the fuselage and restraint system. Each of these steps is performed by ramp service agents who, unlike aircraft service personnel, are not licensed by the FAA. Ramp service agents are required to meet the general FAA regulatory standards which are similar to those which the other Hudson General employees must satisfy, to wit: (1) they are able to identify dangerous goods; (2) they are subject to a five-year background check; and (3) they are required to have a training record showing that they have been trained on the proper method of loading.

Petitioners charge customers on the basis of a standard service agreement which delineates, in detail, all of the services that are provided to a customer. The system for breaking down services would have separate categories for aircraft loading and unloading and for aircraft maintenance. If Hudson General was providing the service of aircraft maintenance, it would not be using air cargo container loaders.

Prior to the audit at issue here, Hudson General was audited on three prior occasions. The first sales tax audit, which was for the period October 1, 1983 through August 31, 1988, resulted in an informal, nonbinding agreement not to impose sales tax on the container loaders. In reaching this agreement, the auditor expressly stated that future audits did not have to agree with the interpretation that was reached on that audit.

During the second sales tax audit, which was for the period June 1, 1989 through May 31, 1992, the auditor requested guidance as to the taxability of certain items including the loaders at issue here. The auditor was advised by a memorandum that pallet loaders were taxable. The memorandum was provided to Hudson General's compliance representative, Mr. Regenstein, at which time Mr. Regenstein knew that the Division of Taxation ("Division") would seek to impose sales tax on air cargo loaders. In October 1993, the audit was closed and the taxability of the loaders was a disagreed item challenged before the Division of Tax Appeals.

On August 20, 1996, Hudson General and the Division executed a Stipulation for Discontinuance for the period June 1, 1989 through May 31, 1992. The agreement provided that from June 1, 1989 to February 29, 1996[2], no tax would be paid on the purchase of pallet loaders but tax would be paid on the purchase of belt loaders. At the time the settlement was finalized, the supervisor for the periods governed by the stipulation advised Hudson General's tax supervisor that the settlement did not apply to subsequent audit periods. Thereafter, during the closing conference for the second audit period, Hudson General was told that the Division would impose tax on the purchase of pallet loaders during future audit periods.

We modify finding of fact "16" of the Administrative Law Judge's determination to read as follows:

> The Division issued a Notice of Determination (assessment number L-018531647-1), dated September 12, 2000, to Hudson General Corporation, which assessed a deficiency of sales and use tax for the period March 1, 1996 through May 31, 1996 in the amount of $41,782.12 plus interest in the amount of $17,966.90 for a balance due of $59,749.02. The Division also issued a Notice of Determination (assessment number L-018533718-5), dated

[2] At the time of the agreement, an audit of the period June 1, 1993 through February 29, 1996 was underway.

> September 19, 2000, to Hudson General LLC, which assessed a deficiency of sales and use tax for the period June 1, 1996 through November 30, 1998 in the amount of $52,429.09 plus interest in the amount of $14,958.77 for a balance due of $67,387.86.[3]

Air cargo containers are certified as airworthy by the FAA and are the same type of container referenced in a Division technical services memorandum (TSB-M-80[4.1]S). The containers are specifically designed to fit into the fuselage of aircraft rather than for use by other transportation systems such as trucks, railways or ships. According to manuals prepared by the International Air Transport Association, air cargo containers are "a removal element of the aircraft floor" and are locked into rails on the inside of the aircraft cargo bay "becom[ing] a component part of the aircraft."

The primary advantage of using cargo containers in wide-bodied commercial aircraft is that they add to the safety of the aircraft by stabilizing the load. Cargo container loaders are the only equipment capable of safely installing air cargo containers into the cargo bay of commercial airlines.

In 1991, the Division advised Devtec Corp. ("Devtec"), a vendor from whom Hudson General had purchased belt and container loaders, that Devtec was not required to collect sales tax on its sales of loaders to airlines. Subsequent to the 1991 letter, the Tax Appeals Tribunal held in ***Matter of Aero Instruments & Avionics*** (Tax Appeals Tribunal, October 5, 1995) that the exemption under Tax Law § 1115(a)(12) applied not only to airlines but also to nonairline businesses, such as Hudson General, which service commercial aircraft.

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[3]We modified finding of fact "16" to more accurately reflect the record.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that Tax Law § 1105(c)(3)(v) provides an exception to the imposition of sales tax on installing, maintaining, servicing or repairing tangible personal property for "such services rendered with respect to commercial aircraft, machinery or equipment and property used by or purchased for the use of such aircraft" as aircraft, machinery or equipment, and property as specified in Tax Law § 1115(a)(21). That section, in turn, exempts from sales tax the receipts from the sale of "[c]ommercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines."

The Administrative Law Judge noted that petitioners have the burden of proving the nontaxability of their purchases of air cargo loaders.

The Administrative Law Judge rejected petitioners' construction of Tax Law § 1115(a)(21) that the property "used by" the commercial aircraft need not be installed on the aircraft or otherwise used for maintenance and repair of the aircraft. The Administrative Law Judge found that if property used by the aircraft was exempt there was no reason to create an additional exemption for property purchased for the use of the aircraft. The Administrative Law Judge concluded that petitioners' argument must be rejected because it violates the fundamental rule that statutes must be read so that each word therein will have a meaning (***see***, McKinney's Cons Laws of NY, Book 1, Statutes § 98). Rather, the Administrative Law Judge determined that property must be purchased for aircraft maintenance and repairs in order to be exempt.

Accordingly, the Administrative Law Judge concluded that equipment used for the installation of property, such as air cargo containers, was not exempt.

The Administrative Law Judge rejected as misplaced petitioners' reliance on the Division's Technical Service Bulletins TSB-M-80(4.1)S and TSB-M-96(81)S concerning the taxability of air cargo containers and their storage racks. The Administrative Law Judge also was unpersuaded by petitioners' arguments that the containers are used to maintain the commercial aircraft and, when loaded, the pallets containing the containers may be regarded as the floor of the aircraft. The Administrative Law Judge noted that the Commissioner's regulations define the terms "repairing, servicing and maintaining" as follows: "[m]aintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition" (20 NYCRR 527.5[a][3]). The Administrative Law Judge concluded that the proper installation and placement of the air cargo containers are necessary for the safe and efficient operation of the aircraft. Forklifts or other loading equipment cannot be used to safely install air cargo containers into aircraft.

In addition, the Administrative Law Judge accepted that the use of the containers and air cargo container loaders promotes the efficient functioning of the aircraft. However, the Administrative Law Judge determined that the cargo container loaders are not engaged in maintenance within the meaning of Tax Law § 1115(a)(21) and 20 NYCRR 527.5(a)(3). The Administrative Law Judge found that the air cargo container loader did not keep the aircraft "in a condition of fitness, efficiency, readiness or safety or restor[e] it to such condition" and, as it is

functionally the same as equipment which loads baggage, it should be treated in a similar manner (20 NYCRR 527.5[a][3]).

ARGUMENTS ON EXCEPTION

In their exception, petitioners argue that air cargo container loaders are exempt from sales tax because they are used to maintain commercial aircraft as defined in 20 NYCRR 527.5(a)(3). Additionally, petitioners argue that the container loaders are exempt under Tax Law § 1115(a)(21) as property "used by" commercial aircraft.

Petitioners maintain that air cargo containers are an integral part of commercial aircraft, being specifically designed to fit and lock into such aircraft and are secured as part of the floor of such aircraft. Petitioner asserts that without the air cargo container loaders, the containers could not be safely installed in the aircraft. Petitioners agree with the Administrative Law Judge's conclusions that the proper installation and placement of the air cargo containers is necessary for the safe and efficient operation of the aircraft. Petitioners allege that by properly installing the containers, the cargo container loaders maintain the safety of the main body of the aircraft and of the aircraft systems. Petitioners claim that the safe transfer and installation of cargo containers into commercial aircraft is a maintenance function, as promoting the efficient functioning of the aircraft falls within the definition of maintenance provided in the regulations. Petitioners disagree with the Administrative Law Judge's conclusion that the cargo container loaders serve the same function as equipment used to load baggage.

Petitioners argue that even if the loaders are not used to maintain the aircraft, they are exempt because they are "used" by the aircraft pursuant to Tax Law § 1115(a)(21). Petitioners

maintain that the use of cargo container loaders minimizes the risk of damage to the aircraft and is necessary for the safe and efficient operation of the aircraft.

In opposition, the Division argues that cargo container loaders are neither installed on nor used to maintain commercial aircraft. Rather, the Division maintains that they are used primarily to move packed cargo containers. The Division asserts that loading aircraft is not maintenance and, as a result, the cargo container loaders are not entitled to exemption from sales tax. The Division alleges that the its regulation defining "maintaining, servicing and repairing" relates to the aircraft's airworthiness or the functionality of its parts and does not relate to loading cargo. The Division points out that an aircraft can fly without cargo containers and the balancing of the containers within the aircraft is not done by the loaders. The Division analogizes the loading and unloading of air cargo containers to the loading and unloading of marine vessels. The Division's regulations provide that the purchase of tangible personal property used to load and unload ships is taxable. Therefore, the Division argues, this same logic should be extended to loaders of air cargo containers.

The Division also disputes petitioners' reading of Tax Law § 1115(a)(21) and maintains that in order for air cargo container loaders to be exempt pursuant to that section, they must be used for maintenance and repair of the aircraft, not just "used by" such aircraft. To read the statute otherwise, argues the Division, would be to make the phrase "purchased for the use of such aircraft for maintenance and repairs" mere surplusage, which is a violation of the rule of statutory construction that each word or sentence will have a meaning and no word or sentence will cancel or render meaningless another word or sentence.

OPINION

Tax Law § 1105(a) imposes a sales tax upon the receipts of every retail sale of tangible personal property except as otherwise provided in Article 28 of the Tax Law. Tax Law § 1115(a)(21) provides for exemption from the sales tax imposed by Tax Law § 1105(a) on certain receipts, including:

> [c]ommercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines (Tax Law § 1115[a][21]).

We first consider petitioners' argument which interprets the above-quoted statute as meaning that purchases of machinery or equipment are entitled to exemption if the purchased items are simply "used by or purchased for the use of" commercial aircraft. We disagree. Instead, we find that machinery or equipment must either be installed on commercial aircraft or be "used by or purchased for the use of such aircraft for maintenance and repairs" in order to qualify for exemption pursuant to that section. Syntactically and pragmatically, we cannot accept petitioners' position that the machinery or equipment for which exemption is sought is exempt regardless of the purpose of its use and despite whether such use is for the maintenance and repair of the aircraft. To interpret Tax Law § 1115(a)(21) as petitioners urge us to do is to ignore established rules of statutory interpretation that "[a]ll parts of a statute must be harmonized with each other . . . and effect and meaning must, if possible, be given to the entire statute and every part and word thereof" (McKinney's Cons Laws of NY, Book 1, Statutes § 98). Petitioners' proffered construction would render the phrase "for maintenance and repairs" meaningless.

As a result, we need to consider whether the cargo container loaders are used in maintaining or repairing the aircraft. For the cargo loaders to be exempt, they must be used to keep commercial aircraft "in a condition of fitness, efficiency, readiness or safety or restoring it to such condition" (20 NYCRR 527.5[a][3]). We find that the cargo container loaders are not engaged in such functions.

In essence, petitioners ask us to classify the function of the cargo container loaders based on the nature of what they transport. This, they argue, differentiates the cargo container loaders from baggage loaders. When loaded, baggage has no ostensible function in the operation of the aircraft. It is merely tangible personal property to be transported by the aircraft from one location to another. It is not the property of the airline and is not used by the airline in order to fly safely or efficiently. Air cargo containers, on the other hand, are owned by the airline and are employed by the airline, even when empty, to make the operation of the airplane safer and more efficient. While petitioners make a valid distinction between the nature of baggage and air cargo containers, we do not agree that this transforms the operation of a cargo container loader into the maintenance and repair of the aircraft while the operation of a baggage loader is not the performance of such a service.

Admittedly, the cargo containers could not function as such on the airplane without first being loaded. Without raising the containers to the door of the aircraft, they would remain on the ground. The Administrative Law Judge finds that "forklifts or other loading equipment cannot be used to safely install air cargo containers into aircraft" (Determination, conclusion of law "I"). In fact, however, the container loaders do not actually position the containers in the aircraft. As a result, they have no function in maintaining the safe and efficient operation of the

aircraft. This is done by a mechanism already a part of the aircraft itself. The loader does bring the containers from their position on the ground to the door of the aircraft. This is but one step in allowing the aircraft's internal powered roller system to ultimately make use of such containers within the plane.

The loaders themselves are not used in maintaining or repairing the aircraft any more than is the apparatus that transports the containers to the loaders. As we noted above, the Administrative Law Judge found that when Hudson General charges their customers for the services they have rendered, petitioners provide "separate categories for aircraft loading and unloading and for aircraft maintenance. If petitioner [sic] was providing the service of aircraft maintenance, it would not be using air cargo container loaders" (Determination, finding of fact "12"). Based on all of the foregoing, we find that the operation of the air cargo container loaders, raising air cargo containers from their ground transporters to the door of a commercial aircraft, is not an activity that relates to "keeping [commercial aircraft] in a condition of fitness, efficiency, readiness or safety or restoring it to such condition," especially in view of the fact that while empty cargo containers may be installed in an aircraft for purposes of ensuring stability, such commercial aircraft can also safely function without any air cargo containers being loaded on board.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Hudson General Corporation and Hudson General LLC is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petitions of Hudson General Corporation and Hudson General LLC are denied; and

4. The notices of deficiency dated September 12, 2000 and September 19, 2000 are sustained.

DATED: Troy, New York
July 3, 2003

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

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