

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
VAC AIR ALLOYS 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 September 1, 1979  
through November 30, 1979.

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DECISION

Petitioner, Vac Air Alloys Corporation, Box 477, Falconer Road, Frewsburg, New York 14738, filed a petition 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 September 1, 1979 through November 30, 1979 (File No. 38278).

On June 14, 1984, petitioner advised the State Tax Commission, in writing, that it waived a hearing and submitted the case for decision based on the entire file, including a Stipulation of Facts dated April 30, 1984, and upon briefs to be submitted by November 5, 1984. After due consideration of the file, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner is entitled to a trade-in allowance towards the purchase price of an aircraft.

FINDINGS OF FACT

1. On March 19, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Vac Air Alloys Corporation, covering the period September 1, 1979 through November 30, 1979 for taxes due of \$58,800.00, plus interest of \$13,139.45, for a total of \$71,939.45.

2. On June 4, 1982, petitioner filed a petition seeking a redetermination of the above assessment. Thereafter, petitioner and the Audit Division agreed that the matter should be submitted for decision based on the entire file without need for oral arguments. The parties submitted a stipulation of relevant facts, dated April 30, 1984, together with attached documentation in support thereof, which provided as follows:

"1. Vac Air Alloys Corporation is a New York corporation with its principal office at Frewsburg, New York. It is engaged in the business of purchasing, processing and reselling scrap titanium and various scrap metal alloys.

2. In August of 1979, Vac Air Alloys Corporation was the owner of, and utilized in its business, a Cessna Citation Jet Aircraft (the 'Citation I').

3. On August 21, 1979, Vac Air Alloys Corporation ('Vac Air') entered into a purchase agreement with Aviation Equipment Leasing, Inc. of Rockville, Maryland...for the purchase of a Cessna Citation II Jet Aircraft (the 'Citation II').

4. In that transaction, Vac Air issued its down payment to Omni International<sup>1</sup> in the sum of \$207,500.00.

5. Under the purchase contract, the seller was obligated to accomplish various repairs and maintenance work and, accordingly, was unable to deliver the aircraft to Vac Air until October 3, 1979.

6. On August 23, 1979, Vac Air transferred to the seller \$1,867,500.00.

7. On August 24, 1979, Aviation Equipment Leasing, Inc. delivered to Vac Air a bill of sale for the Citation II.

8. During the time that the maintenance and repairs were being accomplished, Vac Air took the necessary steps to allow for the trade-in of the Citation I, including the request that the registration number of the Citation I be changed to 748VA and that the Citation II be registered under registration 718VA which had been the registration number for the Citation I.

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1 The relationship between Omni International and Vac Air is unclear from the documentation in the file. The money transfer of August 23, 1979 (stipulation of Fact "6") refers to Omni International as Omni International Jet Trading Floor Inc.

9. On October 3, 1979, Vac Air delivered at Nashville Tennessee Airport the Citation I and took delivery of the Citation II which it had purchased.

10. Record title to the Citation I airplane passed from Vac Air to Business Aviation, Inc. At no time did Aviation Equipment Leasing, Inc. register title to said Citation I airplane in its own name".

3. The purchase agreement, dated August 21, 1979, between petitioner and Aviation Equipment Leasing, Inc. provided that the total purchase price of the Cessna Citation II Model 550 was \$2,075,000.00.

4. In a letter dated August 21, 1979 addressed to petitioner, Aviation Equipment Leasing, Inc. stated:

"As partial consideration for entering into the referenced Purchase Agreement, AEL hereby agrees to take in trade the following aircraft: Cessna Model 500 Citation, Serial No. 148, U.S. Registration No. N-718VA. AEL shall only accept such trade-in simultaneously with the closing of the sale of the referenced aircraft to a third party."

5. The sales price of the Citation I sold to Business Aviation, Inc. was \$840,000.00. The buyer paid said amount directly to petitioner.

6. On October 26, 1979, petitioner filed a report of casual sales on which it indicated that the purchase price of the Citation II was \$1,235,000.00 and paid sales tax thereon of \$86,450.00. Petitioner deducted the amount received from Business Aviation, Inc. (\$840,000.00) from the total purchase price of the Citation II (\$2,075,000.00) to arrive at the amount on which the sales tax was computed.

On audit, the Audit Division held the total purchase price taxable which resulted in the issuance of the notice referred to in Finding of Fact "1".

7. Petitioner argued that it and Aviation Equipment Leasing, Inc. intended that a trade-in of the Citation I be part of the purchase transaction for Citation II and, accordingly, an amount equal to the resale price of Citation I was to be credited towards the purchase price.

CONCLUSIONS OF LAW

A. That section 1101(b)(3) of the Tax Law excludes from the definition of the term "receipt" "any credit for tangible personal property accepted in part payment and intended for resale...".

Petitioner did not trade-in the Citation I as part payment towards the purchase price of the Citation II. Petitioner paid the total purchase price to Aviation Equipment Leasing, Inc. Petitioner did not transfer title or possession of the Citation I to Aviation Equipment Leasing, but rather delivered the aircraft directly to the purchaser. Accordingly, petitioner is not entitled to the benefit of the trade-in exclusion provided under section 1101(b)(3) of the Tax Law and 20 NYCRR 526.5(f), and the purchase price of \$2,075,000.00 is the amount of the receipt subject to tax.

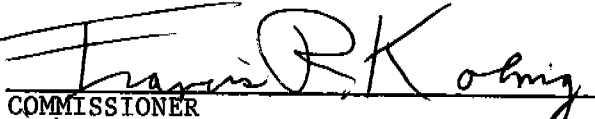
B. That the petition of Vac Air Alloys Corporation is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 19, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 08 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER