

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MID ISLAND AIR SERVICE, INC.	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 & 29	:	
of the Tax Law for the Period September 1, 1978	:	
through November 30, 1982.	:	

Petitioner, Mid Island Air Service, Inc., MacArthur Airport, Ronkonkoma, New York 11779, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the period September 1, 1978 through November 30, 1982 (File No. 49849).

A formal hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 21, 1985 at 1:15 P.M with all briefs to be filed by January 11, 1986. Petitioner appeared by Louis Mancuso, Jr., President, and Joseph Giaquinto, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether petitioner is liable for sales or use tax on the purchase of gasoline and parts used in aircraft employed in providing flight training laboratory courses for Dowling College and/or in aircraft employed in providing flight instruction.

FINDINGS OF FACT

1. On November 10, 1983, as a result of the conduct of a field audit, the Audit Division issued two notices of determination and demand for payment of sales and use taxes due against petitioner, Mid Island Air Service, Inc.

("Mid Island"). The first notice covered the period September 1, 1978 through August 31, 1981 and asserted a tax due of \$22,364.48, plus interest of \$8,992.83, for a total due of \$31,357.31. The second notice covered the period September 1, 1981 through November 30, 1982 and asserted a tax due of \$5,251.80, plus interest of \$847.32, for a total due of \$6,099.21. The total tax assessed against petitioner was \$27,616.37.

2. Petitioner, by signature of its president, Louis Mancuso, Jr., executed consents extending the statute of limitations for issuing an assessment for sales and use taxes for the period at issue to December 20, 1983.

3. On February 3, 1984, the petitioner timely filed a petition for a hearing to review the aforementioned notices. Petitioner disagrees with the assessments on the ground that it had had a prior audit and was never notified that gasoline and parts used in its flight instruction activities were subject to sales or use tax. Petitioner also contends that gasoline and parts used in aircraft for the Dowling College flight program should be exempt from tax.

4. Mid Island's business activities include the sale and rental of aircraft, an air taxi service, aircraft repairing, sales of gasoline and parts and providing flight instruction. Mid Island operates out of MacArthur and Brookhaven Airports on Long Island, New York. On audit, an examiner for the Audit Division determined that petitioner owed additional sales and use taxes totalling \$27,616.37 from the following: the purchase of gasoline and parts, the purchase of a fixed asset and the sale of an aircraft. As the result of pre-hearing conference, the parties agreed that the amount of tax at issue herein is \$19,776.15 assessed on the purchase of gasoline and parts used in the activities described below.

5. Dowling College, in order to provide flight training laboratory courses, entered into an agreement with Mid Island, identified as "Contractor", which provided, in pertinent part, the following:

"Now therefore, it is hereby agreed that, subject to the terms and conditions herein, the Contractor will provide the services, supplies and facilities necessary to conduct the desired airplane pilot training and Dowling College will pay the Contractor for the services, supplies and facilities actually received or used at the rates and terms as set out below:

1. The Private Pilot Flight Laboratory Course (airplane, land, single engine) - Aero 061:
 - a. The only airplane authorized for this course is the Cessna 152.
 - b. The Frasca Trainer will also be used in this course.
 - c. Structured and formal oral tutoring conducted in a classroom/briefing facility will also be provided (not to include that oral operation training conducted in connection with actual flight; i.e., pre-flight briefing, pre-flight and post-flight critique).
 - d. The College will pay only for services received in accordance with the following:
 - (1) Cessna 152 @ \$24.00 per hour; (dry) plus fuel @ \$11.83 per hour; Instructor @ \$19.50 per hour. Frasca Trainer @ \$32.50 per hour (including instructor). Student may select rates in paragraph 29 in accordance with the College "Option Club Plan" in lieu of the rates contained in this paragraph."

6. Dowling College is an organization exempt from payment of sales and use taxes pursuant to section 1116 of the Tax Law.

7. Mid Island also provided flight instruction to anyone who wanted it.

8. Mid Island was the subject of an audit covering the period December 1, 1974 through November 30, 1977. The Audit Division found that petitioner owed

additional taxes of \$1,054.92 on disallowed nontaxable sales and the purchase of a fixed asset. The examiner reported that an analysis of expense purchases for the month of September, 1977 revealed tax was paid where due.

CONCLUSIONS OF LAW

A. That section 1101(b)(5) of the Tax Law defines a sale, in part, to mean:

"Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration..."

A retail sale is defined, in part, in section 1101(b)(4)(1)(A) as a

"sale of tangible personal property to any person for any purpose, other than... for resale as such or as a physical component part of tangible personal property..."

B. That 20 NYCRR 526.6(c) provides:

(c) Resale exclusion. (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

C. That the gasoline and aircraft parts at issue herein were purchased by petitioner for use in fulfilling its agreement with Dowling College, i.e. providing flight instruction to students, and in its own flight instruction activities and were not purchased for resale pursuant to the meaning and intent of section 1101(b)(4)(1)(A) of the Tax Law or 20 NYCRR 526.6(c).


D. Notwithstanding the prior audit, the petitioner has failed to show that it was advised by the Audit Division that its purchases of gasoline and aircraft parts were not subject to tax.

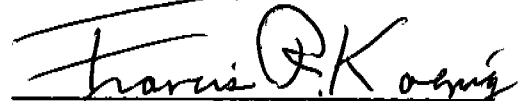
E. That the petition of Mid Island Air Services, Inc. is hereby denied.


DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER