

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CHARTAIR, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~REGISTERED~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period August 1,
1965 through February 28, 1969.

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of December, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by ~~(REGISTERED)~~ mail upon
Chartair, Inc. ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Chartair, Inc.
Tompkins County Airport
Ithaca, New York 14850
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

5th day of December, 1975

Mary Graft

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARTAIR, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~CERTIFIED~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period August 1;
1965 through February 28, 1969.

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of December, 1975, she served the within
Notice of Decision ~~(for Determination)~~ by ~~(certified)~~ mail upon Allen W. Hayes,
President (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Allen W. Hayes, President
Chartair, Inc.
Tompkins County Airport
Ithaca, New York 14850
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

5th day of December, 1975.

Mary G. Hoff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-3336

DATED: Albany, New York
December 5, 1975

Chartair, Inc.
Tompkins County Airport
Ithaca, New York 14850

Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 and 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Edward Rook
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

CHARTAIR, INC. :

DETERMINATION

for a Revision of a Determination or :
for a Refund of Sales and Use Taxes :
under Articles 28 and 29 of the Tax :
Law for the Period August 1, 1965 :
through February 28, 1969. :

Applicant, Chartair, Inc., Tompkins County Airport, Ithaca, New York 14850, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through February 28, 1969.

A formal hearing was held at the offices of the State Tax Commission, Binghamton, New York, on July 26, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Allen W. Hayes, President of and the applicant corporation, and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUES

I. Was the use of a test audit period resulting in a margin of error percentage estimation of additional tax due pursuant to section 1138, Tax Law legally justified?

II. Was the test audit period in question an average period for the applicant's business that could reliably be utilized for the estimation of additional tax due?

III. Was the three percent fee collected by the applicant or gasoline sale receipts for Tompkins County properly included as a taxable item in the test audit?

IV. Did the applicant qualify as an airline for the purposes of section 1115(a)(9), Tax Law?

FINDINGS OF FACT

1. The taxpayer, Chartair, Inc., timely filed New York State sales and use tax returns for the period August 1, 1965 through February 28, 1969.

2. A Notice of Determination of sales and use taxes for the period August 1, 1965 through February 28, 1969, was issued on September 19, 1969, against Chartair, Inc. under Notice No. 90,740,128.

3. The taxpayer made a timely application for a revision of the determination of the deficiencies in sales tax.

4. The taxpayer operates an air service and flight school. The taxpayer's activities included the sale and rental of airplanes and the sale of aviation gasoline and aviation supplies.

5. On August 4, 1969, the taxpayer's business records were the subject of a field audit which covered the period August 1, 1965 through February 28, 1969. It was determined that the taxpayer did not properly include all taxable items for the period in question. Due to the voluminous and incomplete nature of the taxpayer's records, the period of September 1, 1968 through November 30, 1968, was utilized as a test period to develop a margin of error percentage to be applied to the entire tax period in question. A margin of error of 32.523 percent was computed and applied to the entire period in question. Additional tax of \$2,052.55 and penalties and interest of \$525.18 were assessed for a total amount due of \$2,577.73.

6. As a result of conferences with the taxpayer's president and the submission of additional data by the taxpayer, the Sales Tax Bureau suggested the following adjustments be made in the determination of additional tax and interest due. During the test audit period 20,812 gallons of gasoline were sold by the taxpayer rather than the original figure of 23,577 gallons. Taxable sales from gasoline sales for the test period should be reduced to \$8,621.00. Taxable rentals of aircraft and other items should be reduced to \$1,018.00. The aircraft use tax figure for the period should be reduced to \$735.00. Finally, the federal taxes paid on 5,175 gallons of fuel utilized by the taxpayer in operating its own aircraft should not be included in the use tax computation. As

a result of these adjustments, the taxable sales figure would be reduced to a total of \$15,688.00 for the test period. Redetermined tax due for the test period of \$784.40 would result. Compared to the taxpayer's reported tax of \$712.20, additional tax of \$72.20 would be due for the test period. A revised margin of error of 10.1 percent would be determined. When applied to the entire period in question, additional tax of \$610.89 plus interest of \$282.36 would be due for a total amount of \$893.25.

7. The taxpayer contended that the three percent fee it collected on gasoline sales for Tompkins County represented space rentals, landing fees, parking fees and fuel gallonage fees imposed by Tompkins County that were independent of the taxpayer's sale price for the gasoline. The taxpayer argued that such fees were exempt from taxation and should not have been included to determine taxable sales for the test period.

CONCLUSIONS OF LAW

A. That the use of a margin of error method for tax estimation was proper. Section 1138(a), Tax Law, provides that the Commission may estimate tax due on the basis of external indices when a filed return is incorrect or insufficient. Given the lack of precision

in the taxpayer's voluminous records, the use of the margin of error estimation method was justified.

B. That the period utilized as a test period for computing the margin of error was an average business period suitable for such use. There was no convincing evidence presented that the period used was extraordinary or unrepresentative. However, in light of the additional information adduced subsequent to the field audit, the revised margin of error calculation suggested by the Sales Tax Bureau should be substituted for the original figure determined at the field audit.

C. That the three percent Tompkins County fee collected by the taxpayer was properly included as a taxable sale item. The taxpayer did not convincingly prove that said fee was a space rental, landing fee, parking fee or fuel gallonage fee. This amount cannot be re-characterized as tax exempt. The original inclusion of this item as part of taxable sales must stand.

D. That the taxpayer's business does not constitute an airline for the purposes of section 1115(a)(9), Tax Law.

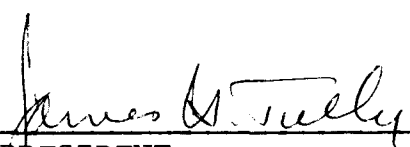
E. That the taxpayer acted in good faith.

F. That the taxpayer's petition is denied as regards the imposition of tax liability. In light of the suggested adjustments

which produce a revised margin of error, the additional tax due is reduced to \$610.89 with interest computed thereon of \$282.36, for a total amount due of \$893.25. All penalties are cancelled.

DATED: Albany, New York
December 5, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER