

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AIRLIFT INTERNATIONAL, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(XXXXXX)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~xxxxx~~ Period July 29, 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 23rd day of December , 1974 , she served the within
Notice of Decision (or Determination) by ~~(certified)~~ mail upon Airlift International,
Inc. ~~(representative of the)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Airlift International, Inc.
International Airport
Miami, Florida

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 the)~~
~~xxx~~ 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

23rd day of December , 1974.

Martha L. Suran

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AIRLIFT INTERNATIONAL, INC.

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

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~XXXXXX~~ Period July 29, 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 23rd day of December , 1974, she served the within
Notice of Decision (or Determination) by ~~REGISTERED~~ mail upon John MacCrate,
Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John MacCrate, Esq.

Bigham, Englar, Jones & Houston
99 John Street

New York, New York 10038
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

23rd day of December , 1974.

Matthew J. Suran

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
December 23, 1974

Airlift International Inc.
International Airport
Miami, Florida

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1139 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
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,



Paul B. Coburn

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	:	
AIRLIFT INTERNATIONAL, INC.	:	DETERMINATION
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 July 29, 1969.	:	

Applicant, Airlift International, Inc., has filed an application 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 July 29, 1969. (File No. PR 153-19). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on May 24, 1973, at 1:15 P.M. Applicant appeared by Bigham, Englar, Jones & Houston, Esqs., (John MacCrate, Esq., of counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Was the cost of repairing a damaged Boeing aircraft owned by applicant, Airlift International, Inc., and used in interstate commerce, subject to New York sales tax?

FINDINGS OF FACT

1. On July 29, 1969, applicant, Airlift International, Inc., was a corporation existing under the laws of the State of Florida. It maintained its principal place of business in Miami, Florida. It operated in interstate and international commerce under a Certificate of Public Convenience and Necessity issued to it by the Civil Aeronautics Board. Pursuant to the terms of this certificate, it operated air cargo and air freight transportation on various routes among New York, Puerto Rico, Chicago, Detroit, Cleveland, Atlanta, cities in Texas, and other points in the United States and overseas. The operations were in no way intrastate.

2. Applicant, Airlift International, Inc., maintained its principal facilities in Miami and only had a cargo facility at Kennedy Airport. This facility was only able to handle minor or turnaround repairs. The Boeing 727 aircraft owned by it were incapable of being operated on water.

3. On July 29, 1969, a 727 aircraft manufactured by the Boeing company with United States registration number N 725 AL, was damaged when the pilot aborted a takeoff and ran off the end of the runway at Kennedy Airport. The aircraft was owned by applicant, Airlift International, Inc., but was used under an interchange lease by both it at night for cargo, and by

National Airlines, Inc. during the day for passengers. National Airlines, Inc. is also a certified carrier.

4. The extent of the damage was such that, under Federal regulations, the aircraft was not permitted to fly. Further under these regulations, the aircraft had to be repaired and certified airworthy by a licensed repair station after repairs before it could be flown again. To effectuate the repairs, applicant, Airlift International, Inc., retained the Boeing company which flew men and materials into New York and repaired the aircraft. The invoices submitted to applicant, Airlift International, Inc., for payment, included a New York sales tax on the materials used in the repairs and also a sales tax on the cost of the labor and subsistence of the Boeing employees who effectuated the repairs. Applicant, Airlift International, Inc., paid these taxes which totaled \$55,003.38. Upon completion of the repairs, Boeing, as a licensed repair station, certified the aircraft as airworthy and the aircraft returned to service in interstate commerce from Kennedy Airport under the control of applicant, Airlift International, Inc.

5. On November 27, 1970, applicant, Airlift International, Inc., filed a claim for credit or refund of state and local sales and use tax in the sum of \$55,003.38, which claim was denied by the Sales Tax Bureau on March 31, 1971.

CONCLUSIONS OF LAW

A. That section 1105(c)(3) of the Tax Law imposes sales tax on:

"Installing tangible personal property, or maintaining, servicing, repairing tangible personal property not held for sale in the regular course of business ..."

The repairs made to the aircraft owned by applicant, Airlift International, Inc., by Boeing constituted a repair of tangible personal property not held for sale in the regular course of business, and therefore, under said section, the charges for same were subject to sales tax unless exempted from sales tax by another provision of Article 28 of the Tax Law.

B. That a Boeing 727 aircraft is not a commercial vessel, and therefore, the exemptions from sales tax of charges for the repairs of commercial vessels engaged in interstate or foreign commerce provided for by sections 1105(c)(3) and 1115(a)(8) of the Tax Law were not applicable to the charges for the repairs made to the Boeing 727 aircraft owned by applicant, Airlift International, Inc.

C. That the portion of the costs of the repairs to the Boeing 727 aircraft owned by applicant, Airlift International, Inc., that represented the cost to Boeing of the labor and subsistence of the Boeing employees who came to New York to repair

said aircraft, was not exempt from the sales tax under that part of section 1105(c)(5) of the Tax Law that provides:

"Wages, salaries and other compensation paid by an employer to an employee for performing as an employee the services described in paragraphs (1) through (5) of this subdivision (c) are not receipts subject to the taxes imposed under such subdivision."

This is true even though said costs were billed separately from the cost of the materials required to effectuate the repairs, since said employees were not employees of applicant, Airlift International, Inc., and since it had retained Boeing to repair the aircraft as a whole and not merely to furnish labor or materials separately.

D. That section 1119(a)(4) of the Tax Law provides that a credit or refund shall be allowed for sales tax paid:

"on the sale or use within this state of tangible personal property, not purchased for resale, if the use of such property in this state is restricted to fabricating such property (including incorporating it into or assembling it with other tangible personal property), processing, printing or imprinting such property and such property is then shipped to a point outside this state for use outside this state".

This section is not applicable to the work done by Boeing on the aircraft owned by applicant, Airlift International, Inc., since such work constituted a repair to said aircraft and not a fabrication of tangible personal property.

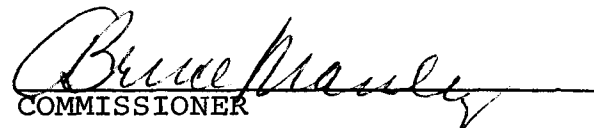
E. That the application of Airlift International, Inc. for credit or refund of state and local sales and use tax in the sum of \$55,003.38 is denied.


DATED: Albany, New York

December 23, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER