

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

COMMAND AIRWAYS, INC.

For a Redetermination of a Deficiency or
a Refund of Sales
Taxes under Article(s) 28 of the
Tax Law for ~~the year(s)~~ a Bulk Sale
on June 1, 1966.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, 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 29th day of December, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon COMMAND AIRWAYS, INC. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Command Airways, Inc.
New Hackensack Road
Wappingers Falls, New York
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

29th day of December, 1971.

Martin J. Russo

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

COMMAND AIRWAYS, INC.

For a Redetermination of a Deficiency or
a Refund of Sales
Taxes under Article(s) 28 of the
Tax Law for ~~the year(s)~~ a Bulk Sale :
on June 1, 1966.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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State of New York
County of Albany

Linda Wilson , 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 29th day of December , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon STEPHEN A. GREENE,
ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
Stephen A. Greene, Esq.
wrapper addressed as follows: Cahill, Gordon, Sonnett, Reindel & Ohl
80 Pine Street
New York, New York

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

29th day of December , 1971.

Martha F. Farnsworth

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
COMMAND AIRWAYS, INC. : DETERMINATION
for a Hearing to Review a Determination :
of Sales Taxes due under Article 28 of :
the Tax Law for a Bulk Sale on June 1, :
1966.

The taxpayer filed an application pursuant to section 1138 of the Tax Law for a hearing to review a determination, dated April 25, 1967, of sales taxes due under Article 28 of the Tax Law on a bulk sale taking place on June 1, 1966. A hearing was duly held before Nigel G. Wright, Hearing Officer, on June 26, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, with the applicant represented by William Davies, Esq., of Cahill, Gordon, Sonnett, Reindel & Ohl, and the Sales Tax Bureau represented by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The primary issue in this case is whether a sales tax is immediately payable on the full cost of aircraft purchased both for purposes of resale and for use in an air taxi service, or whether a sales tax may be payable under an opinion of counsel to the Commission dated January 25, 1968, (1968-1 N.Y.S. Tax Bull. 61; P.H. - N.Y. State and Local Taxes ¶23,257; 5 C.C.H. N.Y. Tax Rep. transfer binder ¶98-938), which holds that when an aircraft dealer or fixed base operator purchases an aircraft not only for purposes of resale but for purposes such as charter service or flight

training then a sales tax may be paid on a base of 1.4% of the cost of the aircraft multiplied by the number of months between the date of acquisition and the subsequent sale.

FINDINGS OF FACT

1. On July 1, 1966, applicant purchased the operating rights of Mid-Hudson Airlines from Dutchess Aero Inc., an air taxi service, together with six aircraft. Resale certificates were given to the vendor for the aircraft. The aggregate price assigned by the purchaser to the aircraft was \$110,000.00. By its contract of purchase, applicant had to maintain existing passenger service. It owned no other aircraft at the time and it contemplated that the purchased aircraft would be used, if necessary, in the air taxi service, but that they would be replaced as fast as possible.

2. Taxpayer's business is to operate a scheduled air taxi service between Poughkeepsie, New York and Kennedy Airport and to operate charter flights. This business did not have to file schedules with federal authorities because of its small size. Taxpayer acquired an airplane in late July from its president and principal shareholder. Another airplane was acquired in August to replace planes sold. These are not in issue.

3. One plane was resold immediately without having been used in service. This was a Cessna, N3847S, resold on July 11, 1966, which had been valued at purchase at \$7,200.00.

4. Three planes were resold fairly quickly but only after they had been used in service. Two of the airplanes, single-engine Cessnas, valued at purchase at \$17,100.00, were resold on July 11, 1966. They were used in the air taxi service as follows:

N3934S, 12 hours 55 minutes; N5353T, 17 hours 10 minutes. One plane, a twin-engine Beech D-18 Number 441MH, valued at purchase at \$20,000.00, was resold on July 25, 1966, for \$23,500.00. It was used in the air taxi service for 12.10 flying hours.

5. Two planes are still owned by the applicant and are used in service. Applicant has advertised their sale but the advertisements have been unsuccessful. These planes are an Aero Commander Number 808JK, valued at \$31,000.00 at purchase, and a Beech C-45 Number 442MH, valued at \$34,500.00 at purchase. Both applicant and the Sales Tax Bureau agree that a full sales tax is due thereon.

6. The determination of tax due is dated April 25, 1967, and is based on a taxable value of \$110,000.00, and a tax rate of 2% for a tax due of \$2,200.00 plus penalty and interest of \$311.61.

CONCLUSIONS OF LAW

A. The one aircraft which was resold immediately without use as found in paragraph three, is exempt from tax.

B. The three aircraft which were both used in service and resold, as found in paragraph four, are subject to tax. The opinion of Counsel must be considered in light of its purpose to grant to aircraft a tax status similar to automobiles which were the subject of an opinion of Counsel dated July 28, 1965, (1965-3 N.Y.S. Tax Bull. 19; P.H. N.Y. State and Local Taxes, ¶23,072; see also Sales Tax Bureau Information Letter No. 6, question 138; P.H. N.Y. State and Local Taxes ¶23,019; C.C.H. N.Y. State Tax Rep. ¶64-072), and thus the benefits of the "1.4% rule" must be confined to those whose

primary activity is the selling of aircraft and who only use the aircraft incidentally and for short periods of time and not extended to those whose primary activity is, as with the applicant here, the use of the aircraft.

C. The two planes still owned by the applicant and used in its service are taxable by concession of counsel and for the reasons stated in paragraph B.

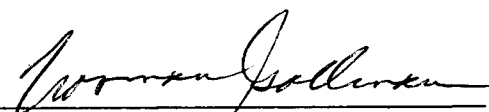
D. The delay in payment of sales taxes in this case is excusable and under section 1145(a) of the Tax Law all penalties and all interest in excess of 1/2 of one percent per month are remitted.

DETERMINATION

The application is granted. The tax is redetermined to exclude tax on the one aircraft valued at \$7,200.00 as found in paragraph three and is affirmed in the remaining amount of \$102,800.00 and shall bear interest of not more than 1/2 of one percent per month under section 1145 of the Tax Law.

DATED: Albany, New York
December 29, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER