

STATE OF NEW YORK
STATE TAX COMMISSION

RAC Corporation
Sales & Use
28-29
1971

In the Matter of the Petition

of

RAC Corporation

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the (Year(s) Sep. 1, 1965 :
thru Sep. 30, 1965

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

State of New York
County of Albany

Martha Funaro , 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 19th day of January , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon RAC

Corporation (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: RAC Corporation
Conklin Street
Farmingdale, New York 11735

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

19th day of January , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAC Corporation

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the (Year(s) Sep. 1, 1965 :
thru Sep. 30, 1965

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

State of New York
County of Albany

Martha Funaro , 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 19th day of January , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon RAC

Corporation (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: George O. Slocum, Esq.
Bleakley, Platt, Schmidt, Hart & Fritz
120 Broadway
New York, New York 10005
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

19th day of January , 19⁷¹.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
RAC CORPORATION	:	
	:	
for a Hearing to Review a Determination	:	
Assessing or Denying a Refund or Credit	:	DETERMINATION
of Sales and/or Use Taxes under Article	:	
28 and/or 29 of the Tax Law for the period	:	
September 1, 1965 through September 30,	:	
1965.	:	

RAC Corporation applied for a hearing to review a determination assessing additional sales and use taxes under Article 28 and/or 29 of the Tax Law for the period September 1, 1965 through September 30, 1965. A formal hearing was held before Alfred Rubenstein, Hearing Officer, in the offices of the State Tax Commission in the City of New York on November 17, 1967, continued on February 16, 1968 and concluded on April 12, 1968. The applicant was represented by Bleakley, Platt, Schmidt, Hart & Fritz, Esqs., (Thomas Platt and George Q. Slocum, Esqs., of counsel).

FINDINGS OF FACT

1. The issues in this case are: (1) Whether a sale of property should be deemed a taxable sale at retail when the purchaser provides the vendor with a certificate other than the official ST-120 as prescribed by the Tax Commission and (2) Whether certain property sold was comprised of fixtures so attached to the realty that they were exempt from sales tax.

2. Under a purchase agreement made September 30, 1965 Republic Aviation Corporation, now known as RAC Corporation, the applicant, sold the bulk of its assets to Fairchild Hiller Corporation and Farmingdale Company.

3. Based upon an audit, the Sales Tax Bureau determined that of a total taxable liability of \$3,285,154.78 the taxpayer reported only \$1,063,621.56. This resulted in a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$44,430.69 plus interest, under notice number 90, 250, 584 dated January 9, 1967.

4. Included in the above additional tax liability was a sales tax on the sale of equipment to Farmingdale Company amounting to \$2,142,271.00. With respect to this transfer of assets the taxpayer accepted a statement from Farmingdale, in lieu of a valid resale certificate prescribed by Section 1132(c) of the Tax Law, which indicated that the tangible personal property acquired "is intended to be held for investment until such time in the future as the market price thereof would make a sale advantageous."

5. The taxpayer did not receive from Farmingdale a valid resale certificate as prescribed in Section 1132(c) of the Tax Law. This section provides that, "Unless a vendor shall have taken from the purchaser a certificate, signed by the purchaser and bearing his name and address and the number of his registration certificate, to the effect that the property or service was purchased for resale ... the sale shall be deemed a taxable sale at retail."

6. During the period September 30, 1965 to November 8, 1967, Farmingdale resold some of the property acquired in the above transaction.

7. Property in a wind tunnel complex, valued at \$430,629.00 and a plasma space chamber valued at \$357,976.00 were considered by the applicant as to be so attached to the realty that they were exempt from the state sales tax.

8. The plasma space chamber was removed from the building in which it was housed and then sold. The wind tunnel complex and the building in which it was housed were included in a five year lease agreement between Farmingdale and Grumman Aircraft Engineering Corporation. No evidence was offered to prove that this property was anything other than personal property.

DETERMINATION

A. The sale to the Farmingdale Company was a taxable sale at retail.

B. The wind tunnel complex and the plasma space chamber are tangible personal property and are therefore subject to state sales tax under Section 1105 of the Tax Law.

C. The application for revision of determination is therefore denied and the determination is sustained, together with such interest as may be lawfully assessed.

DATED: Albany, New York

January 19, 1971

STATE TAX COMMISSION

Stephen Gelman

COMMISSIONER

Bette Hancey

COMMISSIONER

Milton Kohn

COMMISSIONER