

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORTHWEST AIRLINES, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
3/1/72 through 2/28/75

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Northwest Airlines, Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Northwest Airlines, Inc.

Minneapolis St. Paul Int'l Airport
St. Paul, Minnesota 55111

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 Postal Service within the State of New York.

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

Sworn to before me this

16 day of August, 1977.

Marsina Donnini

Janet Macch

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or :
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of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period (s) :
3/1/72 through 2/28/75

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Determination by ~~(certified)~~ mail upon Richard P. Romeo, Esq., Reavis & McGrath (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William Bush & Richard P. Romeo, Esqs.
Reavis & McGrath
345 Park Avenue
New York, New York 10022
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) 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

16 day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 16, 1977

**Northwest Airlines, Inc.
Minneapolis St, Paul Int'l Airport
St. Paul, Minnesota 55111**

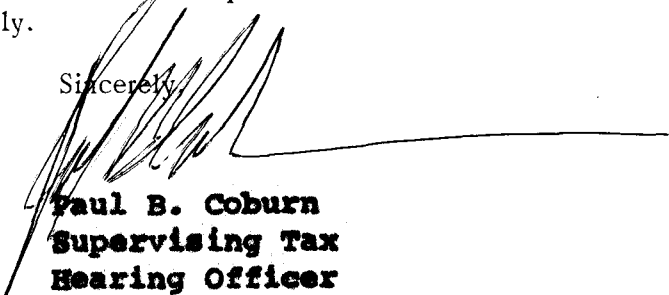
Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of

NORTHWEST AIRLINES, INC. :

DETERMINATION

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 March 1, 1972 :
through February 28, 1975.

Applicant, Northwest Airlines, Inc., Minneapolis St. Paul International Airport, St. Paul, Minnesota 55111, 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 March 1, 1972 through February 28, 1975. (File No. 16391)

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 22, 1977 at 1:15 p.m. Applicant appeared by Reavis & McGrath, Esqs., William Bush, Esq. and Richard P. Romeo, Esq., of counsel. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the taking of possession of aircraft parts by Northwest Airlines, Inc. at John F. Kennedy International Airport

for the purpose of continuing their transportation to St. Paul, Minnesota was a taxable use within the meaning of Sections 1101(b)(7) and 1110 of the Tax Law?

FINDINGS OF FACT

1. On June 14, 1976, the Sales Tax Bureau issued to Northwest Airlines, Inc. (herein, "Northwest") a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period March 1, 1972 to February 28, 1975. The amount claimed due was \$669,571.19, plus penalty and interest.

2. Northwest is a Minnesota corporation whose principal business is the commercial transportation of passengers, mail and property as a scheduled air carrier under certificates of public convenience and necessity issued by the Civil Aeronautics Board. Its principal executive offices and main base for flight operations are located at the Minneapolis - St. Paul International Airport, St. Paul, Minnesota. Northwest operates flights to and from LaGuardia Airport and John F. Kennedy International Airport in New York. It does not operate any intrastate flights within New York.

3. During the period March 1, 1972 to February 28, 1975, Northwest engaged in numerous transactions with Pratt & Whitney, which is located in East Hartford, Connecticut, for the purchase and repair of aircraft engines and spare and replacement parts therefor.

4. The transactions between Northwest and Pratt & Whitney were normally and customarily accomplished in accordance with the terms of a General Terms Agreement between Northwest and United Technologies Corporation, of which Pratt & Whitney is a division. (Stipulation of Facts dated March 17, 1977. Exhibit C.)

5. When Northwest desired to purchase parts from Pratt & Whitney, it issued a purchase order from its Minnesota headquarters to Pratt & Whitney in East Hartford, Connecticut. Each purchase order gave the details of the order and directed that the parts be shipped F.O.B. East Hartford, Connecticut to Northwest in Minnesota. (Stipulation, p. 4 and Exhibit D.)

6. The parts which Northwest wanted repaired by Pratt & Whitney were sent to Pratt & Whitney from Northwest's headquarters in Minnesota, together with a service order which, among other things, specified that the repaired parts were to be returned to Northwest in Minnesota (Stipulation, pp. 4-5 and Exhibit E.) Pratt & Whitney's acceptance of Northwest's orders were transmitted directly to Northwest's main base in Minnesota. (Stipulation, p. 5.)

7. At its plant in East Hartford, Connecticut, Pratt & Whitney packaged the parts it sold to Northwest, or which it repaired, into packaging units owned by Northwest. Such packaging units, or "unit load devices", are designed to fit

intact on Northwest's freight-carrying airplanes. As each packaging unit was loaded, Pratt & Whitney issued invoices to Northwest covering the parts included in each shipment. The invoices specified "Shipped To Northwest Airlines, Inc./ John F. Kennedy Int'l Airport/Jamaica, Long Island, New York/ For Trans Shipment To St. Paul, Minn." (Stipulation, Exhibit F.) Northwest also specified that the destination of the shipments was Northwest's main base in Minnesota. (Stipulation, pp. 6-7 and Exhibit G.)

8. Title to the parts and all risk of loss passed to Northwest when the parts were delivered to Northwest F.O.B. East Hartford, Connecticut. (Stipulation, pp. 6-7.)

9. The parts were generally transported by truck from Pratt & Whitney's plant in East Hartford, Connecticut, by a common carrier, Westfair Transport, whose charges for transportation were billed to and paid by Northwest. The parts were transported by Westfair's trucks to Northwest's freight facility at John F. Kennedy International Airport in New York for transshipment on the next available Northwest flight to Northwest's main base in Minnesota pursuant to an airbill which accompanied each shipment and which had been completed by Pratt & Whitney before the parts left Connecticut. (Stipulation, pp. 7-8 and Exhibit H.)

10. The Northwest freight facility to which the parts were brought by Westfair for transshipment by airplane to Minnesota is the same freight facility at which Northwest regularly accepts freight it carries for its customers. When the sealed containers arrived at the Northwest freight facility, they were checked in for transshipment by Northwest's freight handling personnel, weighed, and then placed on a storage rack to await the next available flight. Normally, the next Northwest flight to Minnesota would be within four to twelve hours after the parts arrived in New York on a Westfair truck except on weekends, when Northwest's flights were less frequent. The longest period of time any parts were stored was forty-eight hours.

11. While the packaging units containing the parts were in New York, the packages were not opened, not even for inspection. All of the parts which passed through New York were transshipped by Northwest to its main base in Minnesota. The parts in question were generally not capable of being used at Northwest's facilities in New York and Northwest's employees in New York had no authority to use the parts in New York. The parts were handled in New York by Northwest in all respects as if they were goods sent to Minnesota by some other shipper.

12. The official who conducted the audit of Northwest testified as follows at the hearing:

"I did know that ... there was a very short period of time when the parts were in New York, and that they were for the specific purpose of being trans-shipped to Northwest in Minneapolis."

13. The packaging units containing the parts were not opened and the parts were not inspected until they arrived at Northwest's main base in Minnesota. Subsequent installation of the parts into the engines of Northwest's planes normally occurred at Northwest's main base in Minnesota and occasionally occurred at Northwest's facilities in Seattle, Washington, or Tokyo, Japan. None of the parts were installed in New York.

14. Northwest engaged in no activities in New York from June 30, 1972 to October 4, 1972 because its pilots were on strike. During that period, Northwest continued to purchase parts from Pratt & Whitney and the parts were shipped from Pratt & Whitney's plant in East Hartford, Connecticut to Northwest's main base in Minnesota by surface transportation or by air carriers other than Northwest.

CONCLUSIONS OF LAW

A. That a use tax may be levied upon property which comes to "rest" within the state after the purchase transaction has been concluded elsewhere, for such property becomes part of the mass of property within the state. Henneford v. Silas Mason Co., 300 U.S. 577 (1937). Williamsburgh Power Plant Corp. v. City

of New York, 255 App. Div. 214, 7 N.Y.S. 2d 326 (2nd Dept., 1938), aff'd., 280 N.Y. 551 (1939).

B. That there must be some taxable event in the state. In Airlift Intern, Inc. v. State Tax Commission, 382 N.Y.S. 2d 572 (3rd Dept., 1976), the taxable event constituted the repair of petitioner's aircraft at John F. Kennedy International Airport. In Matter of United Air Lines v. Joseph, 281 App. Div. 876, 120 N.Y.S. 2d 532, mot. for lv. to app. den., 306 N.Y. 981, the taxable event was the installation in New York City of parts on aircraft which spent most of their time outside the city.

C. That title to the aircraft parts passed to Northwest in Connecticut. The aircraft parts were in New York for the sole purpose of continuing their journey to Minnesota. The property never came to "rest" in New York, nor did a taxable event occur in the state since

(1) The invoices issued by Pratt & Whitney to Northwest covering the parts included in each shipment specify shipment to John F. Kennedy International Airport "For Trans Shipment To St. Paul, Minn.",

(2) The parts arrived at the Northwest freight facility at John F. Kennedy International Airport in sealed containers where they were weighed and placed on racks to await the next

available Northwest flight, which in most cases was within four to twelve hours after arrival of the containers and

(3) While in New York the sealed containers were not opened. Northwest's employees in New York were authorized only to send the parts to Minnesota. Every part which passed through New York was sent on by Northwest to its ultimate destination in Minnesota.

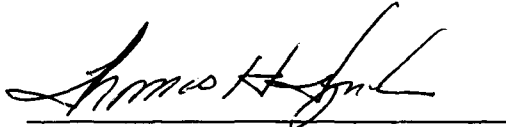
D. That application of Northwest Airlines, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 14, 1976, is cancelled.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER