

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.:

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
11/27/68, 8/25/69 and 10/28/69

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of December , 1977 , he served the within

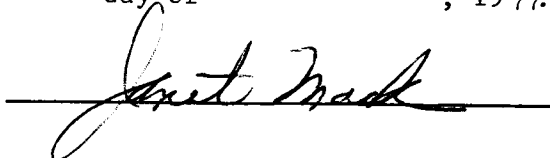
Notice of Determination by ~~XXXXXX~~ mail upon International Telephone and
Telegraph Corp. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: International Telephone and Telegraph Corporation
320 Park Avenue
New York, New York 10022

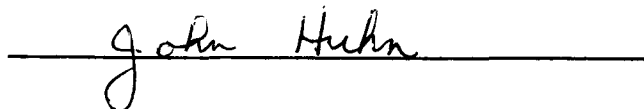
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

1st day of December , 1977.







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

December 1, 1977

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

International Telephone and Telegraph Corporation
320 Park Avenue
New York, New York 10022

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,

JOHN J. SOLLECITO
DIRECTOR

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.	:	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	:	
Periods 11/27/68, 8/25/69 and 10/28/69.	:	

International Telephone and Telegraph Corporation, 320 Park Avenue, New York, New York 10022, 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 periods 11/27/68, 8/25/69 and 10/28/69 (File No. 00458).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 12, 1975 at 9:00 A.M. The applicant appeared by Steven Goldberg, Esq. The Sales Tax Bureau appeared by Saul Heckelman, Esq. (James Scott, Esq., of counsel).

ISSUES

I. Whether corporate aircraft purchased by applicant outside of this State and used by applicant in interstate commerce, qualify for exemption from use tax as commercial vessels primarily engaged in interstate commerce under section 1115(a)(8) of the Tax Law.

II. Whether imposition by this State of a tax on the use of such aircraft violates the "Commerce Clause" of the United States Constitution.

FINDINGS OF FACT

1. International Telephone and Telegraph Corporation (hereinafter referred to as ITT) has its headquarters at 320 Park Avenue, New York, New York.

2(a). In June of 1968, applicant purchased a Beechcraft DEG 18 Series airplane for the sum of \$38,528.60. In November of 1968, it paid a use tax of \$1,926.43, plus \$48.16 interest, for a total of \$1,974.59.

(b). The Beechcraft DEG 18 has twin reciprocating engines, a gross weight of 9,700 pounds and a flight range of 500 miles. It has a crew of two and can carry five passengers.

(c). The Beechcraft was purchased from Hamilton Management Corporation of Denver, Colorado, a subsidiary of ITT. Delivery was made at an airport in Milville, New Jersey, on or about May 31, 1968. An ITT pilot then flew the plane to Atlantic Aviation Corporation in Wilmington, Delaware, for interior and equipment changes.

3(a). In July of 1969, applicant purchased a Grumman Gulfstream, Model G159, serial number 199, registration number N745G, for \$1,301,000.00. In August 1969, it paid a use tax thereon of 72,080.00.

(b). In October of 1969, applicant purchased a Grumman Gulfstream, Model G159, serial number 200, registration number N750G for \$1,384,500.00. It paid a use tax thereon of \$83,070.00.

(c). The Grumman Gulfstream is a twin engine turbo-prop airplane with a gross weight of 36,000 pounds, a flight range of 2,500 miles and an altitude of 30,000 feet. It has a crew of two and can carry thirteen passengers.

(d). The two Gulfstreams were purchased by ITT from Grumman Aerospace Corporation. They were built by Grumman in Bethpage, Long Island, New York. Each plane was flown from Bethpage to a distributor, Atlantic Aviation Corporation of Wilmington, Delaware, a subsidiary of the Dupont Corporation, where the interior work and electrical work was finished on each plane. For purposes of this flight, each plane was fitted with a "small electronic pack" which enabled it to meet the requirements for landing at Wilmington. More extensive equipment would have been necessary to enable it to land at LaGuardia Airport in New York State. The interior and electrical work done by Atlantic required sixty to ninety days. Final payment for the planes was made to a representative of Grumman in Wilmington for the Gulfstream serial #199 on March 6, 1969, and for the Gulfstream serial #200 on June 3, 1969. On these dates, Grumman tendered a "memorandum of delivery" stating that delivery took place at Wilmington, Delaware, and an "aircraft bill of sale" stating that Grumman as "owners of the full legal and beneficial title...does... hereby sell, grant, transfer and deliver all rights, title, and interests" in the aircraft to ITT.

4(a). After the completion of interior work and the installation of electronic equipment at Wilmington, Delaware, each aircraft was flown to New York State. After arrival in New York, each plane was used by ITT regularly and exclusively for the transportation of its executives, its customers and its property between the various plants and other locations of its own and of its subsidiary companies.

(b). The planes require a maintenance inspection

every 75 hours of flight time. This is done at Atlantic Aviation in Delaware.

(c). All three planes are flown in and out of LaGuardia Airport. There they are refueled and receive lavatory service at Butler Aviation, the fixed-base operator. Applicant pays regular daily charges for any services performed. They also are serviced by a local food catering firm, Lakewood Foods.

(d). The Beechcraft averages ten trips a month from LaGuardia, accounting for 60% of its usage. Each of the Grumman's' trips from LaGuardia average about 30% of its flight time.

(e). The Beechcraft was used on numerous occasions in intrastate flights within New York State. The Grumman serial #199, in one sixteen-month period, flew about eight hundred flights, one of which was an intrastate flight between airports in New York State. The Grumman serial #200 made no intrastate flights within New York State.

CONCLUSIONS OF LAW

A. That an airplane is not a "comercial vessel" within the meaning and intent of section 1115(a)(8) of the Tax Law.

(Airlift International, Inc. v. State Tax Commission, 52 A.D. 2d 688). Accordingly, the aforementioned aircraft are not exempt from the imposition of use tax.

B. That none of said aircraft were in use in interstate or foreign commerce at the time of entry into New York State.

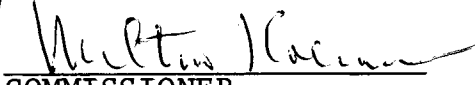
C. That the constitutionality of the laws of the State of New York are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that Articles 28 and 29 of the Tax Law are constitutional to the extent that they relate to the imposition of tax against applicant.


D. That the application is hereby denied.

DATED: Albany, New York
December 1, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER