

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AIRCO ALLOYS,

DIVISION OF AIRCO, INC.

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)~~ :
January 18, 1974.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor , 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 28th day of February , 19 77, ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon Airco Alloys, Division
of Airco, Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Airco Alloys
Division of Airco, Inc.
85 Chestnut Ridge Road
Montvale, New Jersey 07645
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~~
~~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

28th day of February , 1977.

Bruce Batchelor

Just

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age, and that on the 28th day of February , 1977, ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon John E. Runals, 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 E. Runals, Esq.
Runals, Broderick, Shoemaker, Rickert, Berrigan & Doherty
256 Third Street - P.O. Box 815 Falls Station
Niagara Falls, New York 14303

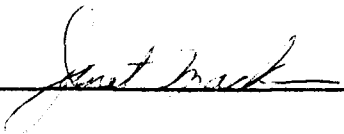
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Sworn to before me this

28th day of February , 1977.

Bruce Batchelor





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

February 28, 1977

TELEPHONE: (518) **457-1723**

Airco Alloys
Division of Airco, Inc.
85 Chestnut Ridge Road
Montvale, New Jersey 07645

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 & 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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

Whether applicant, Airco Alloys' purchase of an airplane on January 18, 1974, was a purchase solely for the purpose of resale, and, therefore, exempt from the imposition of sales tax.

FINDINGS OF FACT

1. Applicant, Airco Alloys, on October 30, 1974, filed an Application For Credit or Refund of State and Local Sales and Use Tax in the amount of \$87,360.00. Applicant paid said amount, under protest, as sales tax imposed on the purchase price of a 1973 NA 265 Sabreliner airplane. On November 15, 1974, the Sales Tax Bureau denied applicant's claim.

2. Applicant, Airco Alloys, a division of Airco, Inc., regularly used an airplane to transport corporate personnel in the transaction of company business. Applicant manufactured ferro alloys. In the fall of 1973, applicant began to make inquiries concerning the purchase of a new airplane through a purchase and lease-back arrangement.

3. On January 16, 1974, applicant, Airco Alloys, and Page Airways Inc. entered into a sales agreement, subsequently amended on January 17, 1974, in which applicant purchased a 1973 NA 265 Sabreliner aircraft. Airco Inc. provided the funds for said purchase. The aircraft was delivered to applicant, in Niagara Falls, New York, January 18, 1974. Applicant traded in its old aircraft for the Sabreliner, receiving cash for said aircraft, and paid Page Airways, Inc. \$1,200,000.00 for the Sabreliner. In connection with said purchase, applicant issued a resale certificate to Page Airways on January 17, 1974.

4. In early February, 1974, applicant, Airco Alloys, through Airco Inc., accepted U.S. Leasing International's proposal for the purchase and lease-back of the Sabreliner. The consummation of the sale and the lease-back did not occur until June 18, 1974 because of a problem concerning the ownership by a foreign entity, British Oxygen Corporation, of more than 25% of the outstanding common shares of Airco Inc. Said ownership precluded the designation of Airco Inc. as a citizen of the United States for the purposes of the registration requirements of the Federal Aviation Administration. This resulted in the redrafting of the underlying legal documents required to transfer the Sabreliner to United States Leasing International.

5. In December, 1974, the Sabreliner was disposed of by United States Leasing International in that the lease was terminated on the aircraft and a new aircraft was acquired for lease to applicant, Airco Alloys. United States Leasing International Inc. did not bill Airco Inc. for sales tax due on rental payments under the Sabreliner lease, nor did the Airco Alloys Division report and pay a compensating use tax on the rental payments for said aircraft in any of the sales and use tax returns filed by said division.

6. During the interval between the date of purchase by applicant, Airco Alloys, of the Sabreliner on January 18, 1974 and the date of sale and lease-back from United States Leasing International on June 18,

1974, applicant continually used the Sabreliner for transporting corporate officers involved in company business.

CONCLUSIONS OF LAW

A. That applicant, Airco Alloys, at the time it purchased the 1973 NA 265 Sabreliner aircraft on January 18, 1974, intended to resell and lease-back said aircraft.

B. That the section of Article 28 of the Tax Law that exempts tangible personal property purchased for resale, from the imposition of sales tax, explicitly circumscribes the word "resale". Section 1101 (b)(1) and 1101 (b)(4)(i)(A) defines purchase at retail as "a purchase by any person for any purpose (emphasis added)...other than for resale as such or as a physical component part of tangible personal property". The court in Jacobs v. Joseph, 282 App. Div 622, 126 N.Y.S. 2d 274, construed the parallel section of the predecessor to the New York State Sales and Use Tax Law, the New York City Compensating Use Tax Law, which is supplemental to the city's Sales Tax Law, very restrictively. Said section defines purchase at retail as "a purchase by any person for any purpose other than for resale in the form of tangible personal property". (Administrative Code of City of New York, §M46-15.0 subd. 4, formerly §M41-15.0, renumbered by L 1963, ch 100, § 1404). The New York City Sales Tax Law contains an identical provision. (Administrative Code of City of New York §N46-1.0, subd 7, formerly §N41-1.0, renumbered by L 1963 ch 100, §1427). The court said in part:

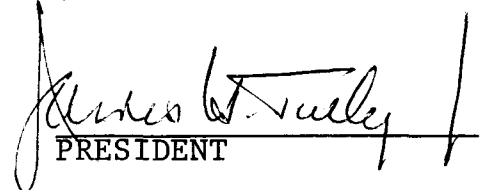
"The way the language runs makes the legislative purpose reasonably clear to exempt only, property then solely used for resale because 'any purpose' would include all purposes generally. The words 'other than' narrows the exempted purpose down to the singular. It would seem reasonable to think that using the property for resale and some other purpose or purposes (emphasis added) would not carry with it the singular exception created by the statute". Jacobs v. Joseph, 282 App Div 622, 625, supra.

C. That applicant, Airco Alloys, did not have a "singular" purpose for purchasing the NA 265 Sabreliner Aircraft. Applicant not only purchased the aircraft for resale but also for the purpose of transporting corporate officers in the transaction of company business between the date of purchase and the date of resale and lease-back. Therefore, applicant did not purchase said aircraft "solely" for the purpose of resale within the meaning and intent of sections 1101 (b)(1) and 1101 (b)(4)(i)(A) of the Tax Law.

D. That the application of Airco Alloys is denied.

DATED: Albany, New York
February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER