

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
General Electric Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 of the Tax Law
for the Period 8/1/65 - 2/28/69. :

State of New York
County of Albany

Jay Vredenburg, 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 17th day of August, 1979, he served the within notice of Determination by mail upon General Electric Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

General Electric Co.
570 Lexington Ave.
New York, NY 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of August, 1979.

Carmen Mottolone

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Jay Vredenburg, 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 17th day of August, 1979, he served the within notice of Determination by mail upon Joseph H. Murphy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Joseph H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
1 Mony Plaza
Syracuse, NY 13202

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
17th day of August, 1979.

Carmen Mattolone

Jay J. Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

General Electric Co.
570 Lexington Ave.
New York, NY 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 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,

A handwritten signature in cursive script, reading "Michael Alexander".

cc: Petitioner's Representative
Joseph H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
1 Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
GENERAL ELECTRIC COMPANY	:	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	:	
Period August 1, 1965 through February 28,	:	
1969	:	

Applicant, General Electric Company, One River Road, Schenectady, New York 12345, 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 August 1, 1965 through February 28, 1969 (File No. 15880).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 21, 1977 at 9:00 A.M. Applicant appeared by Hancock, Estabrook, Ryan, Shove & Hust (Joseph H. Murphy, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Harry Kadish, Esq., of counsel).

ISSUES

I. Whether applicant's use of aircraft in New York City constituted "use" within the meaning and intent of sections 1110 and 1210 of the Tax Law.

II. Whether New York City compensating use tax, based on payments made toward the purchase price and/or payments made for modification costs, is due on the use of aircraft within New York City by applicant.

III. Whether the Notice of Determination issued to applicant was proper in form and substance.

FINDINGS OF FACT

1. On March 17, 1972 as a result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, General Electric Company. Said Notice was for taxes due for the period August 1, 1965 through February 28, 1969 of \$103,423.98, plus interest of \$32,728.26, for a total due of \$136,152.24. Applicant timely filed an application for revision of said determination. The only tax at issue in this proceeding is the sum of \$84,980.73 (plus interest) which represents New York City compensating use tax, based on the payments made toward the purchase price and/or modification costs of certain aircraft.

2. Aircraft No. N-366-G was delivered to applicant on October 12, 1965 in Newark, New Jersey, and was based at applicant's hanger in White Plains, New York. This aircraft was purchased prior to August 1, 1965 and no New York City compensating use tax was imposed on its purchase price. The use tax was based on the cost of modifications to this aircraft. A payment of \$48,342.67 for partial costs of modification was made in November of 1965, and a New York City use tax of \$1,450.28 was assessed for the quarter ending November 30, 1965. A second and final payment of \$96,939.40 for modification costs on this aircraft was made in January of 1966, and a New York City use tax of \$2,908.18 was assessed for the quarter ending February 28, 1966. The first use of this aircraft in New York City occurred on January 25, 1966. During the first 184 days after applicant took delivery of this aircraft, it landed in New York City 32 times and spent a total of thirty hours on the ground in New York

City. This aircraft was purchased and used by applicant to provide applicant's executives with air transportation in the conduct of its business.

3. Aircraft No. N-368-G was delivered to applicant on April 8, 1966 in Newark, New Jersey, and was based at applicant's hanger in White Plains, New York. The total purchase price of this aircraft was \$975,000.00, which was paid to the vendor in two installments. The total cost of modifications for this aircraft was \$127,099.00, which was also paid to the vendor in two installments. A partial payment of \$375,000.00 toward the purchase price was made in December of 1965, and a New York City use tax of \$11,250.00 was assessed for the quarter ending February 28, 1966. The second and final payment of \$600,000.00 toward the purchase price was made in April of 1966, and a New York City use tax of \$18,000.00 was assessed for the quarter ending May 31, 1966. A payment of \$47,256.00 for partial costs of modifications was made in May of 1966, and a New York City use tax of \$1,417.68 was assessed for the quarter ending May 31, 1966. The second and final payment of \$79,843.00 for modification costs was made in September of 1966, and a New York City use tax of \$2,395.29 was assessed for the quarter ending November 30, 1966. The first use of this aircraft in New York City occurred on August 26, 1966. During the first 195 days after applicant took delivery of the aircraft, it landed in New York City seventeen times and spent a total of fifteen hours on the ground in New York City. This aircraft was purchased and used by applicant to provide applicant's executives with air transportation in the conduct of its business.

4. Aircraft No. N-369-G was delivered to applicant on May 3, 1966 in Newark, New Jersey, and was based at applicant's hanger in White Plains, New York. The total purchase price of this aircraft was \$975,000.00, which was paid to the vendor in three installments, the first of which for \$10,000.00 was paid to the vendor in 1964. No assessment for a New York City use tax was made on this payment. The total cost of modifications was \$130,310.00, which was paid to the vendor in two installments. A partial payment of \$365,000.00 toward the purchase price was made in October of 1965, and a New York City use tax of \$10,950.00 was assessed for the quarter ending November 30, 1965.

The third and final payment of \$600,000.00 toward the purchase price was made in May of 1966, and a New York City use tax of \$18,000.00 was assessed for the quarter ending May 31, 1966. A payment of \$44,067.00 for partial costs of modifications was made in July of 1966 and a New York City use tax of \$1,322.01 was assessed for the quarter ending August 31, 1966. The second and final payment of \$86,243.00 for modification costs was made in October of 1966, and a New York City use tax of \$2,587.29 was assessed for the quarter ending November 30, 1966. The first use of this aircraft in New York City occurred on October 31, 1966. During the first 240 days after applicant took delivery of this aircraft, it landed in New York City eleven times and spent a total of nineteen hours on the ground in New York City. This aircraft was purchased and used by applicant to provide applicant's executives with air transportation in the conduct of its business.

5. Aircraft No. N-364-G was delivered to applicant on August 13, 1968 in White Plains, New York, and was based at applicant's

hanger in Schenectady, New York. The total purchase price of this aircraft was \$925,000.00 and an allowance of \$435,000.00 was made by the vendor for a trade-in. The net purchase price which was subject to taxation was \$490,000.00. A payment in this amount was made in August of 1968, and a New York City use tax of \$14,700.00 was assessed for the quarter ending August 31, 1968. The first use of this aircraft in New York City occurred on October 4, 1968. During the first 185 days after applicant took delivery of this aircraft, it landed in New York City nineteen times and spent a total of forty hours on the ground in New York City. This aircraft was purchased and used by applicant to provide applicant's executives with air transportation in the conduct of its business.

6. In addition to maintaining offices in Schenectady, New York, applicant also maintained offices in New Jersey, New York City, and in other places located in New York State.

7. The aircraft were used by applicant to transport its executive personnel both within and without New York State, as well as abroad. The aircraft would pick up and discharge passengers at John F. Kennedy International Airport and at La Guardia Airport, both located in the County of Queens, City and State of New York.

CONCLUSIONS OF LAW

A. That section 1101(b)(7) of the Tax Law defines "use" as "The exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time...."

B. That the aircraft purchased by applicant, set forth in Findings of Fact "2", "3", "4" and "5", were "used" by applicant in New York City, within the meaning and intent of section 1101(b)(7) of the Tax Law.

C. That applicant's purchase of the aforementioned aircraft and the use thereof in New York City for the period that the assessment was issued, namely, August 1, 1965 through February 28, 1969, for the transportation of its personnel while conducting its business, is subject to the imposition of the New York City compensating use tax, in accordance with the meaning and intent of sections 1110 and 1210 of the Tax Law.

D. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 17, 1972 covers the entire period of August 1, 1965 through February 28, 1969, and not merely one quarter or group of quarters. The quarterly periods listed on the assessment were for identification of the payments made and for purposes of computing interest only. The assessment of additional taxes by the Sales Tax Bureau was timely under section 1147(b) of the Tax Law.

E. That the Sales Tax Bureau erred in the imposition of the use tax and computed the interest thereon in the wrong period. The use tax must be imposed within the quarter the aircraft was first used in New York City, and the interest must be computed from the date the return was required to be filed.

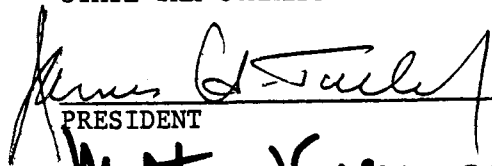
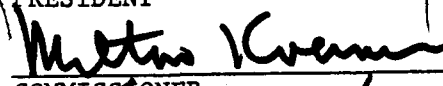
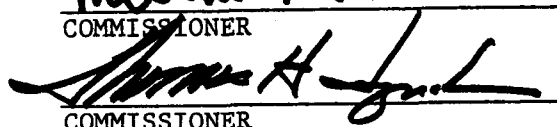
F. That the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 17, 1972, in accordance with Conclusion of Law "E."

G. That the application of General Electric Company is granted to the extent indicated in Conclusion of Law "F," and that, except as so granted, is in all other respects denied.

DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER