

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MOHAWK AIRLINES, INC.

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 ~~XXXXXX~~ Period(s) :
September 1, 1971 through April 12, 1972.

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 11th day of April , 1979 , ~~he~~ served the within

Notice of Determination by ~~XXXXXX~~ mail upon Mohawk Airlines, Inc.
c/o Allegheny 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: Mohawk Airlines, Inc.
c/o Allegheny Airlines, Inc.
Washington National Airport
Washington, D.C.

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~~
~~XXXXXX)~~ 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

11th day of April , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~ :
September 1, 1971 through April 12, 1972.

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 11th day of April, 19 79, He served the within

Notice of Determination by ~~XXXXXXXX~~ mail upon Joseph H. Murphy, Esq.,
One Mony Plaza (representative of) the petitioner in the within proceeding,
Syracuse, NY c/o Hancock, Estabrook, Ryan,
Shove & Hust, Esqs.

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph H. Murphy, Esq.
c/o Hancock, Estabrook, Ryan,
Shove & Hust, Esqs.
One Mony Plaza
Syracuse, NY

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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

11th day of April, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALLEGHENY AIRLINES, INC.

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 ~~XXXXXX~~ Period ~~(s)~~
June 1, 1971 through May 31, 1974.

State of New York
County of Albany

John Huhn, 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 11th day of April, 19 79, ~~she~~ served the within
Notice of Determination by ~~certified~~ mail upon Allegheny 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: Allegheny Airlines, Inc.
Washington National Airport
Washington, D.C.

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.

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~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
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Sworn to before me this

11th day of April, 19 79

Marilyn J. Rafnican

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALLEGHENY AIRLINES, INC.

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 ~~XXXXXX~~ Period ~~(XX)~~ :
June 1, 1971 through May 31, 1974.

State of New York
County of Albany

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Notice of Determination by ~~(XXXXXXXX)~~ mail upon Joseph H. Murphy, Esq.
c/o Hancock, Estabrook, Ryan,
Shove & Hust, Esqs.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Joseph H. Murphy, Esq.

as follows: c/o Hancock, Estabrook, Ryan,
Shove & Hust, Esqs.

One Mony Plaza
Syracuse, NY

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Sworn to before me this

11th day of April, 19 79.

Marilyn J. Papucian

John Huhn



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

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

April 11, 1979

Mohawk Airlines, Inc.
c/o Allegheny Airlines, Inc.
Washington National Airport
Washington, D.C.

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,

MICHAEL ALEXANDER
SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative

Taxing Bureau's Representative



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

JAMES H. TULLY JR., PRESIDENT
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April 11, 1979

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Sincerely,

MICHAEL ALEXANDER
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 :

MOHAWK AIRLINES, INC. :

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 September 1, 1971 through :
April 12, 1972. :

DETERMINATION

In the Matter of the Application :

of :

ALLEGHENY AIRLINES, INC. :

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 June 1, 1971 through :
May 31, 1974. :

Applicant, Mohawk Airlines, Inc. ("Mohawk"), c/o Allegheny
Airlines, Inc., Washington National Airport, Washington, D.C., 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
September 1, 1971 through April 12, 1972 (File No. 10548).

Applicant, Allegheny Airlines, Inc. ("Allegheny"), Washington National Airport, Washington, D.C., 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 June 1, 1971 through May 31, 1974 (File No. 10541).

A combined 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 March 30, 1977 at 9:15 A.M. Applicants appeared by Hancock, Estabrook, Ryan, Shove & Hust, Esqs. (Joseph H. Murphy, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Harry Kadish, Esq., of counsel).

ISSUES

I. Whether applicants are liable for a use tax on aircraft parts shipped outside this State for overhauling, rebuilding and reconditioning, as required by the Federal Aviation Administration, which parts are later returned to New York State for installation and use by applicants.

II. Whether the field audit on which the notices of determination were issued against applicants was proper and correct.

III. Whether applicant Allegheny is entitled to a credit on aircraft parts allegedly transferred outside New York State.

IV. Whether applicant Allegheny is entitled to a credit on charges for labor allegedly performed outside New York State.

V. Whether interest should be reduced and penalty waived.

FINDINGS OF FACT

1. On November 15, 1974, applicant Mohawk executed a consent which extended the period of limitation for assessment of sales and use taxes to December 20, 1975, for the taxable periods September 1, 1971 through April 12, 1972. On September 16, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Mohawk for the period September 1, 1971 through April 12, 1972. Said Notice imposed additional tax of \$147,162.24, plus penalty and interest of \$68,583.19, for a total of \$215,745.43.

2. On May 7, 1975, applicant Allegheny executed a consent which extended the period of limitation for assessment of sales and use taxes to December 20, 1975 for the taxable periods June 1, 1971 through May 31, 1974. On September 16, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Allegheny for the period June 1, 1971 through May 31, 1974. Said Notice imposed additional tax of \$443,114.41, plus penalty and interest of \$157,810.75, for a total of \$600,925.16.

3. Until April 12, 1972, Mohawk was a commercial airline engaged in the transportation of passengers and cargo. It serviced many terminals in New York State including Albany, Binghamton, Buffalo, Elmira, Glens Falls, Ithaca, Kennedy International, La Guardia,

Plattsburgh, Poughkeepsie, Rochester, Saranac Lake, Syracuse, Oneida, Watertown and White Plains. The majority of flights departing from New York State were intra-state. Administrative offices and repair facilities were maintained at the Oneida County Airport in Utica.

4. On April 12, 1972, Mohawk merged with Allegheny. The corporation formed as a result of the merger is operating as Allegheny Airlines, Inc. Allegheny is a commercial airline engaged in the transportation of passengers and cargo throughout the eastern United States. Its administrative offices and reservation center are located at Crystal Plaza, Washington, D.C.

5. Prior to the merger of April 12, 1972, applicant Allegheny serviced five terminals in New York and had its maintenance facility, as well as flight and stewardess training schools, at the Greater Pittsburgh National Airport.

6. After its merger with Mohawk, applicant Allegheny serviced 17 terminals in New York. These were Albany, Binghamton, Buffalo, Elmira, Glens Falls, Islip, Ithaca, Jamestown, La Guardia, JFK International, Plattsburgh, Rochester, Saranac Lake, Syracuse, Utica, Watertown and White Plains. Allegheny also operated three ticket offices in New York City and one in White Plains. It also operated an additional maintenance facility, plus a flight and stewardess school, at Oneida County Airport.

7. Starting in April of 1973, Allegheny began phasing out operations at the Utica, New York, facility and commenced transferring parts to its Pittsburgh, Pennsylvania, facility. On January 8, 1974, operations in Utica ceased and the balance of the parts stored there were shipped to Pittsburgh.

8. Both applicants must abide by Federal Aviation Administration requirements. One such requirement is that an aircraft carrier must overhaul and recondition aircraft after a specific number of flight hours, which number depends on the type of aircraft. In most cases during the tax periods in issue, applicants' employees removed parts from the aircraft and sent these parts to various locations outside the State, to be rebuilt by outside firms. When the repairs were made, the parts were sent back to applicants in New York State for installation in another aircraft, or for placement in inventory storage facilities.

9. Both applicants followed the general trade practice of classifying aircraft parts as either "rotatable parts" or "expendable parts." These classifications are further broken down to "airframe parts," "engine parts" and "other flight equipment parts." Rotatable parts have the greatest value and unless seriously damaged, are rebuilt continuously. Spare parts of this nature are usually included in the purchase of the aircraft. If a part of this type is removed from an aircraft and sent to be rebuilt, it is replaced by a similar part from inventory storage. When the part to be rebuilt is sent

outside the State for such purposes, it is then returned and placed in inventory within the State. Expendable parts are not as durable as rotatable parts. They include items ranging from nuts and bolts to parts worth in excess of \$10,000.00. Certain portions of these parts are capable of being rebuilt. Airframe parts are parts related to the aircraft frame and body, while engine parts are parts directly related to the aircraft engine. The term "other flight equipment" includes all other parts.

10. Mohawk did not report any purchases subject to use tax. The assessment against Mohawk was based on a field audit. The Sales Tax Bureau auditor examined Mohawk's purchases of aircraft parts. The auditor used the period January 1, 1972 through April 12, 1972 as a test period. Total aircraft parts purchased and paid for in the test period without sales tax being charged amounted to \$1,692,150.59. Purchases from 22 particular vendors represented 90.7% of the purchases in the test period. A comparison of purchases made from the 22 vendors during the test and during the period September 1, 1971 through December 31, 1971 indicated that purchases from the 22 vendors made during the period September 1, 1971 through December 31, 1971 increased by 14.85%. Total purchases during the test period were increased, based on the projected increase of 14.85%, to arrive at total purchases for the period September 1, 1971 through December 31, 1971 of \$1,943,434.95. The purchases for the two periods totaling \$3,635,585.54 resulted in additional use tax due for aircraft parts of \$145,423.40. The Sales

Tax Bureau also examined recurring expenses. A test and projection of recurring expense purchases resulted in additional taxable purchases of \$33,973.87, and in use tax due of \$1,738.84. The total use tax due on aircraft parts and recurring expenses amounted to \$147,162.24.

11. The assessment against Allegheny was also based on a field audit. The result of tests of recurring expenses and fixed assets was \$1,082,183.28 of additional taxable purchases. Use tax computed at the appropriate rates amounted to \$71,574.64. Applicant Allegheny concedes this amount to be due. The auditor examined in detail the aircraft parts and repairs, purchase vouchers, invoices, and requisitions for the period January 1, 1973 through June 30, 1973. The auditor prepared a schedule of purchase invoices which did not include sales tax charges for parts or repairs which were designated for receipt by Allegheny at the Utica maintenance facility. Said auditor also selected a sample of 19 aircraft parts and repair suppliers. Total purchases from these suppliers during the test period (January 1, 1973 through June 30, 1973) represented 91.35% of total aircraft parts or repair purchases subject to use tax. Purchases from these vendors not charged sales tax and shipped to Utica for the periods April 13, 1972 through June 30, 1972, July 1, 1972 through December 31, 1972, and July 1, 1973 through December 31, 1973, were computed and compared as a percentage of the base or test-period sample. These percentages were then applied to total test findings to

arrive at additional taxable aircraft parts and repairs purchases. The use tax due amounted to \$371,539.77. The total tax due on recurring expenses and fixed assets and aircraft parts amounted to \$443,114.41.

12. Total aircraft parts and repair purchases as computed in Finding of Fact 11 amounted to \$9,288,495.27. Applicant Allegheny claimed a credit for purchases of \$10,168,820.00, on the grounds that purchases were made in bulk and that the parts were stored in New York and subsequently shipped to points outside the State for use there. This claim for credit was denied.

13. Applicant Allegheny contends that a use tax is not due on labor charges where a repair or reconditioning of an aircraft part was made outside New York State by a repair center sanctioned by the Federal Aviation Administration.

14. Applicant Allegheny contends that parts destined for New York and included in the Sales Tax Bureau's audit were never received in New York. A letter allegedly sent to suppliers which advised them to divert shipments of parts scheduled for delivery to Utica, New York, to a point outside the State, was offered in evidence.

15. Applicants cooperated with the Sales Tax Bureau and acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the overhauling, rebuilding and reconditioning of aircraft parts constitutes the maintaining, servicing, and repairing of tangible personal property not held for sale in the regular course

of business, within the meaning and intent of section 1105(c)(3) of the Tax Law.

B. That a use tax is due on applicants' use in New York State of tangible personal property shipped by them outside this State for the maintaining and servicing of said property or for the repairing and furnishing of parts in connection therewith by repairmen who performed such services outside New York State, later returning said parts to applicants in New York State, within the meaning and intent of section 1110(D) of the Tax Law.

C. That applicants have failed to show that the findings of the audit conducted by the Sales Tax Bureau were incorrect, in accordance with section 1138(a) of the Tax Law; thus, in accordance with the results, findings and computations reflected in the notices of determination previously issued, the audits were proper and correct. (Matter of Grant Co. v. Joseph, 2 NY2d, 196,206; Markowitz v. State Tax Commission, 54 AD2d 1023; Matter of Meyer v. State Tax Commission, 61 AD2d 223).

D. That "...to determine the scope of a statutorily prescribed exemption, ...the rule is that the exemptions are to be strictly construed and that if any ambiguity or uncertainty exists it is to be resolved in favor of the sovereign and against exemption." (Matter of Aldrich v. Murphy, 42 AD2d 385; see also Matter of Airlift International v. State Tax Commission, 52 AD2d 688).

E. That in accordance with Conclusion of Law "D", applicant Allegheny has failed to present sufficient evidence to show that it is entitled to a credit pursuant to sections 1119(a)(2) and 1139 of the Tax Law, with respect to inventory allegedly transferred to Pittsburgh, Pennsylvania; furthermore, it has failed to present sufficient evidence to show that it is entitled to any credit on charges for labor performed outside the State. The aforesaid claims for credit, refund, or offset are hereby denied.

F. That the application of Mohawk is granted to the extent that the interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law be waived.

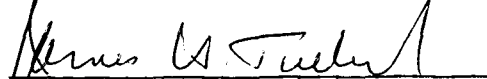
G. That the application of Allegheny is granted to the extent that the interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law be waived.

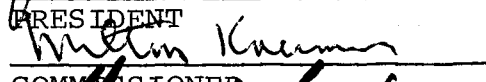
H. That the applications of Mohawk Airlines, Inc. and Allegheny Airlines, Inc. are granted to the extent indicated in Conclusions of Law "F" and "G"; that the Sales Tax Bureau is hereby directed to accordingly modify the notices of determination and demand for payment of sales and use taxes due issued September 16, 1975; and that, except as so granted, the applications are in all other respects denied.

DATED: Albany, New York

April 11, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER