

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Magnavox Co., The :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Sales & Use Tax :

under Article 28 & 29 of the Tax Law

for the Period 5/30/71. :

State of New York

County of Albany

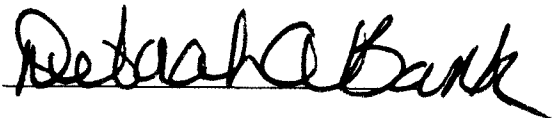
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by mail upon Magnavox Co., The, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

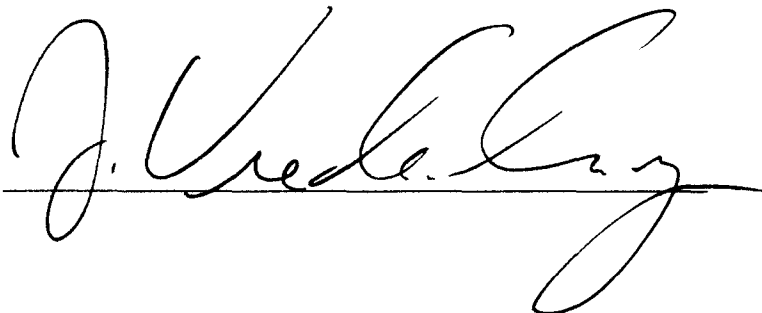
Magnavox Co., The
1700 Magnavox Way
Ft. Wayne, IN 46804

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
14th day of November, 1980.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Magnavox Co., The :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
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State of New York
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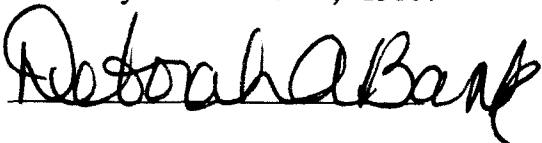
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by mail upon Thomas J. Galligan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

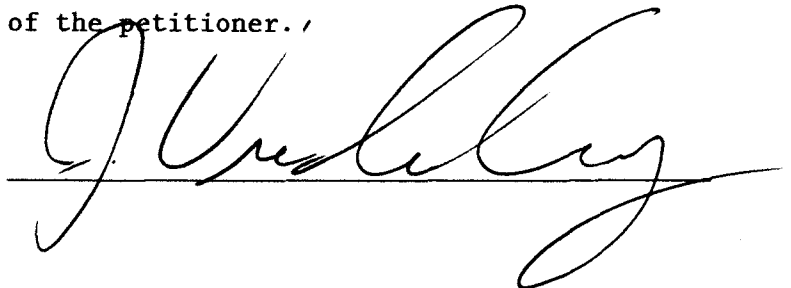
Mr. Thomas J. Galligan
1700 Magnavox Way
Ft. Wayne, IN 46804

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
14th day of November, 1980.





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

November 14, 1980

Magnavox Co., The
1700 Magnavox Way
Ft. Wayne, IN 46804

Gentlemen:

Please take notice of the Decision 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Thomas J. Galligan
1700 Magnavox Way
Ft. Wayne, IN 46804
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THE MAGNAVOX COMPANY	:	DECISION
	:	
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 May 30, 1971.	:	

Petitioner, The Magnavox Company, 1700 Magnavox Way, Fort Wayne, Indiana 46804, filed a petition 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 May 30, 1971 (File No. 10218).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on Tuesday, December 13, 1977 at 11:10 A.M. Petitioner appeared by Thomas J. Galligan, Esq. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether a corporate airplane that otherwise is on an interstate flight is subject to the New York State Use Tax if the airplane, incidental to arriving and/or leaving New York State, makes a "dead head" flight for purposes of parking the airplane prior to its departure from New York State.

II. Whether the imposition of such tax violates the commerce clause of the United States Constitution.

FINDINGS OF FACT

1. On October 20, 1971, the Sales Tax Bureau issued a timely Notice of Determination and Demand for Payment of Sales and Use Taxes Due against The

Magnavox Company (hereinafter, "petitioner"), stating:

"The tax stated...is for 1970 Hawker S125 Reg. #640M
Information submitted by your representative at a conference held on
October 6, 1971 with this Bureau disclosed that the above mentioned
aircraft was used in intrastate flights within New York State on two
separate occasions. Based on this, the following use tax is determined
to be due in accordance with the provisions of section 1117 and 1138
of the New York Tax Law.

Tax\$72,000.00
Penalty and interest
(Computed from 5/30/71) 6,480.00

TOTAL USE TAX, PENALTY AND INTEREST\$78,480.00"

2. On October 9, 1970, petitioner purchased a Hawker S125 airplane, at a cost of \$1,200,000.00. Title and possession were taken by petitioner in Delaware.

3. In December, 1970, the aircraft was placed into service.

4. In 1971, the executive offices of petitioner were in New York City, and the corporate offices were in Fort Wayne, Indiana.

5. The airplane was never based or stored in the State of New York, but was normally hangared in Fort Wayne, Indiana. Repairs and maintenance of the aircraft were principally conducted in Ohio. The petitioner considered this aircraft as an "executive jet" for use by its officers. Once the airplane was put into service, it was used on almost a daily basis in flying company personnel between various corporate locations.

6. All flights in which the airplane landed in or departed from an airport in New York State were with passengers from or to an airport located in another state, except for two flights. On May 10, 1971 the airplane was flown from Fort Wayne, Indiana to John F. Kennedy Airport in New York where all the passengers deplaned. It then flew without passengers to La Guardia Airport in New York, where, after a layover of a few hours, it picked up passengers and departed for a location outside New York State.

7. On August 2, 1971 the airplane was flown from Fort Wayne, Indiana to La Guardia Airport in New York, where passengers were picked up and flown to Baltimore, Maryland. On the same day the passengers were flown from Baltimore to Westchester County Airport, White Plains, New York, where they deplaned. The airplane was then flown without passengers from White Plains to La Guardia, where, on August 3, 1971, after a twelve hour layover, it departed for a location outside New York State.

8. Each of the flights described in Findings of Fact "6" and "7", i.e. from Kennedy to La Guardia on May 10, 1971 and from White Plains to La Guardia on August 2, 1971, were "dead head"; that is, the airplane was staffed by crew only and carried neither passengers nor cargo. The purpose of the "dead head" flight was to park the airplane and to await the passengers leaving New York State.

9. The Audit Division did not project any proof nor did it allege that any other flights were made by this airplane within New York State.

CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law provides in part as follows:

"Section 1110. Imposition of compensating use tax. --

Except to the extent that property or services have already been or will be subject to the sales tax...there is hereby imposed... a use tax for the use within this state...(A) of any tangible personal property purchased at retail..." (emphasis added).

Thus it is clear the tax in issue cannot be levied unless it can be shown the airplane in issue was "use(d) within this state".

B. That an airplane is designed or manufactured for the purpose of carrying either passengers or cargo. The airplane in issue did not carry passengers nor cargo from one airport to another airport within New York State. Instead, the airplane either took passengers from one single location

in New York State to another out-of-state jurisdiction or it brought passengers from an out-of-state jurisdiction to a single location in New York State. Thus the airplane in issue was not "used" within New York State, within the meaning of section 1110 of the Tax Law. See: Technical Services Bureau Memorandum, TSB-M-78 (12)S/September 25, 1978.

C. That the issue as to whether the imposition of the tax herein violates the commerce clause of the United States Constitution is moot.

D. That the petition herein is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is cancelled.

DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

November 14, 1980

Magnavox Co., The
1700 Magnavox Way
Ft. Wayne, IN 46804

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Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Thomas J. Galligan
1700 Magnavox Way
Ft. Wayne, IN 46804
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
THE MAGNAVOX COMPANY
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 May 30, 1971.

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STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


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TA 26 (9-79)

STATE OF NEW YORK

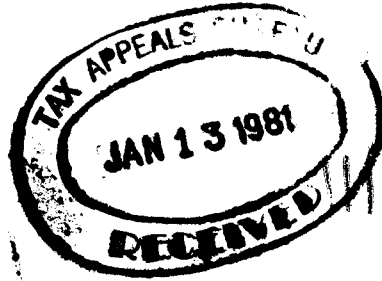
State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Thomas J. Galligan
1700 Magnavox Way
Ft. Wayne, IN 46804



Representatives
Copy

Not this Address
Return to Sender