

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ben-Zion Feldman :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/78-8/30/80. :
:

AFFIDAVIT OF MAILING

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 25th day of May, 1984, he served the within notice of Decision by certified mail upon Ben-Zion Feldman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ben-Zion Feldman
c/o T. Dadzie
189 E. 93rd St. #3D
New York, NY 10028

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
25th day of May, 1984.

David Parchuck

Bennie Aubrey
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 25, 1984

Ben-Zion Feldman
5, Inbar Street
Neve Monosson, ISRAEL

Dear Mr. Feldman:

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 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ben-Zion Feldman
c/o T. Dadzie
189 E. 93rd St. #3D
New York, NY 10028
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BEN-ZION FELDMAN	:	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 June 1, 1978	:	
through August 31, 1980.	:	

Petitioner, Ben-Zion Feldman, 5 Inbar Street, Neve Monosson, Israel, 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 June 1, 1978 through August 31, 1980 (File No. 36562).

A small claims hearing was held before John F. Koagel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, Room 65-51, New York, New York 10047, on August 31, 1983 at 10:30 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund of sales tax paid on the rental charges for an aircraft used for flight training.

FINDINGS OF FACT

1. On August 10, 1981, petitioner filed an Application for Credit or Refund of State and Local Sales or Use Tax covering the period July, 1978 through June, 1980. Petitioner sought a refund of sales tax paid in the amount of \$226.78 on aircraft rentals. The application was filed on the grounds that

the aircraft was used for flight training in order to obtain a private pilot's license and later a commercial pilot's license.

2. The Audit Division denied petitioner's claim for refund on January 12, 1982 on the grounds that the hourly rental of an aircraft is taxable under section 1105(a) of the Tax Law.

3. During the period July, 1978 through June, 1980 petitioner rented aircraft from Airnav, Inc. and paid the appropriate sales tax as billed on the hourly rental charges. Petitioner also rented aircraft for a short term from Reliable Air Service, Inc. In all instances the aircraft was used for the purpose of meeting the requirements set forth by the Federal Aviation Administration for in-flight training and experience in order to obtain both a private and commercial pilot's license.

Petitioner arranged to have his own flight instructors who were not affiliated with either Airnav or Reliable. Charges billed by these vendors covered the aircraft rentals only.

4. Petitioner relied on an Opinion of Counsel dated January 25, 1968 which set forth rules applying to aircraft dealers and fixed-base operators of aircraft with respect to purchases, sales and rentals of aircraft. Such rules, in pertinent part, are as follows:

"5. Flight Instructions:

All flight instruction under the control of a qualified teacher, including solo flights, is exempt from tax where required in order for the student to obtain his license to fly. Any use of the training aircraft by a pilot who has already received his license, even though it is for the purpose of achieving a higher rating, is considered a taxable rental."

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise

provided. A sale as defined by Tax Law §1101(b)(5) includes any transfer of title or possession or both, rental, lease or license to use, in any manner or by any means for a consideration.

B. That counsel's opinion of January 25, 1968 (Finding of Fact "4") relates to aircraft dealers and fixed-base operators who retain dominion and control of the aircraft while the student is receiving instructions. However, that where a student rents or leases an aircraft and then hires an instructor, the student gained dominion and control of the aircraft and thus rented the aircraft.

C. That the rental of aircraft is subject to the tax imposed under §1105(a) of the Tax Law.

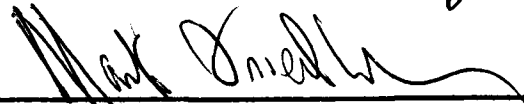
D. That the petition of Ben-Zion Feldman is denied and the refund denial of January 12, 1982 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 440 977 042

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Ben Jon Feldman</i>	
Street and No. <i>907 Dodge</i>	
P.O., State and ZIP Code <i>189 E. 93rd St #3D</i>	
Post Office <i>New York NY 10028</i>	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

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