

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Vac Air Alloys Corporation :
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 9/1/79-11/30/79. :
:

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 8th day of May, 1985, he served the within notice of Decision by certified mail upon Vac Air Alloys Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vac Air Alloys Corporation
Box 477
Falconer Rd.
Frewsburg, NY 14738

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
8th day of May, 1985.

David Parchuck

James A. Dwyer
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Vac Air Alloys Corporation :
for Redetermination of a Deficiency or Revision :
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under Article 28 & 29 of the Tax Law for the :
Period 9/1/79-11/30/79. :
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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 8th day of May, 1985, he served the within notice of Decision by certified mail upon Barry H. Singer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barry H. Singer
Cooper, Cohen, Singer & Ecker
280 Park Ave.
New York, NY 10017

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
8th day of May, 1985.

David Parchuck

James A. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 8, 1985

Vac Air Alloys Corporation
Box 477
Falconer Rd.
Frewsburg, NY 14738

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 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
Barry H. Singer
Cooper, Cohen, Singer & Ecker
280 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
VAC AIR ALLOYS CORPORATION	:	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 September 1, 1979	:	
through November 30, 1979.	:	

Petitioner, Vac Air Alloys Corporation, Box 477, Falconer Road, Frewsburg, New York 14738, 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 September 1, 1979 through November 30, 1979 (File No. 38278).

On June 14, 1984, petitioner advised the State Tax Commission, in writing, that it waived a hearing and submitted the case for decision based on the entire file, including a Stipulation of Facts dated April 30, 1984, and upon briefs to be submitted by November 5, 1984. After due consideration of the file, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner is entitled to a trade-in allowance towards the purchase price of an aircraft.

FINDINGS OF FACT

1. On March 19, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Vac Air Alloys Corporation, covering the period September 1, 1979 through November 30, 1979 for taxes due of \$58,800.00, plus interest of \$13,139.45, for a total of \$71,939.45.

2. On June 4, 1982, petitioner filed a petition seeking a redetermination of the above assessment. Thereafter, petitioner and the Audit Division agreed that the matter should be submitted for decision based on the entire file without need for oral arguments. The parties submitted a stipulation of relevant facts, dated April 30, 1984, together with attached documentation in support thereof, which provided as follows:

"1. Vac Air Alloys Corporation is a New York corporation with its principal office at Frewsburg, New York. It is engaged in the business of purchasing, processing and reselling scrap titanium and various scrap metal alloys.

2. In August of 1979, Vac Air Alloys Corporation was the owner of, and utilized in its business, a Cessna Citation Jet Aircraft (the 'Citation I').

3. On August 21, 1979, Vac Air Alloys Corporation ('Vac Air') entered into a purchase agreement with Aviation Equipment Leasing, Inc. of Rockville, Maryland...for the purchase of a Cessna Citation II Jet Aircraft (the 'Citation II').

4. In that transaction, Vac Air issued its down payment to Omni International¹ in the sum of \$207,500.00.

5. Under the purchase contract, the seller was obligated to accomplish various repairs and maintenance work and, accordingly, was unable to deliver the aircraft to Vac Air until October 3, 1979.

6. On August 23, 1979, Vac Air transferred to the seller \$1,867,500.00.

7. On August 24, 1979, Aviation Equipment Leasing, Inc. delivered to Vac Air a bill of sale for the Citation II.

8. During the time that the maintenance and repairs were being accomplished, Vac Air took the necessary steps to allow for the trade-in of the Citation I, including the request that the registration number of the Citation I be changed to 748VA and that the Citation II be registered under registration 718VA which had been the registration number for the Citation I.

1 The relationship between Omni International and Vac Air is unclear from the documentation in the file. The money transfer of August 23, 1979 (stipulation of Fact "6") refers to Omni International as Omni International Jet Trading Floor Inc.

9. On October 3, 1979, Vac Air delivered at Nashville Tennessee Airport the Citation I and took delivery of the Citation II which it had purchased.

10. Record title to the Citation I airplane passed from Vac Air to Business Aviation, Inc. At no time did Aviation Equipment Leasing, Inc. register title to said Citation I airplane in its own name".

3. The purchase agreement, dated August 21, 1979, between petitioner and Aviation Equipment Leasing, Inc. provided that the total purchase price of the Cessna Citation II Model 550 was \$2,075,000.00.

4. In a letter dated August 21, 1979 addressed to petitioner, Aviation Equipment Leasing, Inc. stated:

"As partial consideration for entering into the referenced Purchase Agreement, AEL hereby agrees to take in trade the following aircraft: Cessna Model 500 Citation, Serial No. 148, U.S. Registration No. N-718VA. AEL shall only accept such trade-in simultaneously with the closing of the sale of the referenced aircraft to a third party."

5. The sales price of the Citation I sold to Business Aviation, Inc. was \$840,000.00. The buyer paid said amount directly to petitioner.

6. On October 26, 1979, petitioner filed a report of casual sales on which it indicated that the purchase price of the Citation II was \$1,235,000.00 and paid sales tax thereon of \$86,450.00. Petitioner deducted the amount received from Business Aviation, Inc. (\$840,000.00) from the total purchase price of the Citation II (\$2,075,000.00) to arrive at the amount on which the sales tax was computed.

On audit, the Audit Division held the total purchase price taxable which resulted in the issuance of the notice referred to in Finding of Fact "1".

7. Petitioner argued that it and Aviation Equipment Leasing, Inc. intended that a trade-in of the Citation I be part of the purchase transaction for Citation II and, accordingly, an amount equal to the resale price of Citation I was to be credited towards the purchase price.

CONCLUSIONS OF LAW

A. That section 1101(b)(3) of the Tax Law excludes from the definition of the term "receipt" "any credit for tangible personal property accepted in part payment and intended for resale...".


Petitioner did not trade-in the Citation I as part payment towards the purchase price of the Citation II. Petitioner paid the total purchase price to Aviation Equipment Leasing, Inc. Petitioner did not transfer title or possession of the Citation I to Aviation Equipment Leasing, but rather delivered the aircraft directly to the purchaser. Accordingly, petitioner is not entitled to the benefit of the trade-in exclusion provided under section 1101(b)(3) of the Tax Law and 20 NYCRR 526.5(f), and the purchase price of \$2,075,000.00 is the amount of the receipt subject to tax.

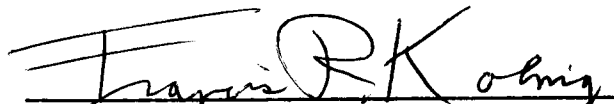
B. That the petition of Vac Air Alloys Corporation is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 19, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 08 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Mr. C. C. Thompson</i>	
Street and No. <i>Box 477</i>	
P.O., State and ZIP Code <i>Greenville SC 29615</i>	
Postage	\$
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	

P 693 169 814

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Barry H. Senger</i>	
Street and No. <i>Box 477</i>	
P.O., State and ZIP Code <i>Greenville SC 29615</i>	
Postage	\$
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	