

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mid Island Air Service, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law for the :
Period 8/31/81-11/30/82.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 15th day of April, 1986, he/she served the within notice of Decision by certified mail upon Mid Island Air Service, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mid Island Air Service, Inc.
McArthur Airport
Ronkonkoma, NY 11779

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
15th day of April, 1986.

David Parchuck

Janet M. Snay

Authorized to administer oaths
pursuant to Tax Law section 174

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

April 15, 1986

Mid Island Air Service, Inc.
McArthur Airport
Ronkonkoma, NY 11779

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MID ISLAND AIR SERVICE, INC.	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 & 29	:	
of the Tax Law for the Period September 1, 1978	:	
through November 30, 1982.	:	

Petitioner, Mid Island Air Service, Inc., MacArthur Airport, Ronkonkoma, New York 11779, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the period September 1, 1978 through November 30, 1982 (File No. 49849).

A formal hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 21, 1985 at 1:15 P.M with all briefs to be filed by January 11, 1986. Petitioner appeared by Louis Mancuso, Jr., President, and Joseph Giaquinto, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether petitioner is liable for sales or use tax on the purchase of gasoline and parts used in aircraft employed in providing flight training laboratory courses for Dowling College and/or in aircraft employed in providing flight instruction.

FINDINGS OF FACT

1. On November 10, 1983, as a result of the conduct of a field audit, the Audit Division issued two notices of determination and demand for payment of sales and use taxes due against petitioner, Mid Island Air Service, Inc.

("Mid Island"). The first notice covered the period September 1, 1978 through August 31, 1981 and asserted a tax due of \$22,364.48, plus interest of \$8,992.83, for a total due of \$31,357.31. The second notice covered the period September 1, 1981 through November 30, 1982 and asserted a tax due of \$5,251.80, plus interest of \$847.32, for a total due of \$6,099.21. The total tax assessed against petitioner was \$27,616.37.

2. Petitioner, by signature of its president, Louis Mancuso, Jr., executed consents extending the statute of limitations for issuing an assessment for sales and use taxes for the period at issue to December 20, 1983.

3. On February 3, 1984, the petitioner timely filed a petition for a hearing to review the aforementioned notices. Petitioner disagrees with the assessments on the ground that it had had a prior audit and was never notified that gasoline and parts used in its flight instruction activities were subject to sales or use tax. Petitioner also contends that gasoline and parts used in aircraft for the Dowling College flight program should be exempt from tax.

4. Mid Island's business activities include the sale and rental of aircraft, an air taxi service, aircraft repairing, sales of gasoline and parts and providing flight instruction. Mid Island operates out of MacArthur and Brookhaven Airports on Long Island, New York. On audit, an examiner for the Audit Division determined that petitioner owed additional sales and use taxes totalling \$27,616.37 from the following: the purchase of gasoline and parts, the purchase of a fixed asset and the sale of an aircraft. As the result of pre-hearing conference, the parties agreed that the amount of tax at issue herein is \$19,776.15 assessed on the purchase of gasoline and parts used in the activities described below.

5. Dowling College, in order to provide flight training laboratory courses, entered into an agreement with Mid Island, identified as "Contractor", which provided, in pertinent part, the following:

"Now therefore, it is hereby agreed that, subject to the terms and conditions herein, the Contractor will provide the services, supplies and facilities necessary to conduct the desired airplane pilot training and Dowling College will pay the Contractor for the services, supplies and facilities actually received or used at the rates and terms as set out below:

1. The Private Pilot Flight Laboratory Course (airplane, land, single engine) - Aero 061:
 - a. The only airplane authorized for this course is the Cessna 152.
 - b. The Frasca Trainer will also be used in this course.
 - c. Structured and formal oral tutoring conducted in a classroom/briefing facility will also be provided (not to include that oral operation training conducted in connection with actual flight; i.e., pre-flight briefing, pre-flight and post-flight critique).
 - d. The College will pay only for services received in accordance with the following:
 - (1) Cessna 152 @ \$24.00 per hour; (dry) plus fuel @ \$11.83 per hour; Instructor @ \$19.50 per hour. Frasca Trainer @ \$32.50 per hour (including instructor). Student may select rates in paragraph 29 in accordance with the College "Option Club Plan" in lieu of the rates contained in this paragraph."

6. Dowling College is an organization exempt from payment of sales and use taxes pursuant to section 1116 of the Tax Law.

7. Mid Island also provided flight instruction to anyone who wanted it.

8. Mid Island was the subject of an audit covering the period December 1, 1974 through November 30, 1977. The Audit Division found that petitioner owed

additional taxes of \$1,054.92 on disallowed nontaxable sales and the purchase of a fixed asset. The examiner reported that an analysis of expense purchases for the month of September, 1977 revealed tax was paid where due.

CONCLUSIONS OF LAW

A. That section 1101(b)(5) of the Tax Law defines a sale, in part, to mean:

"Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration..."

A retail sale is defined, in part, in section 1101(b)(4)(i)(A) as a

"sale of tangible personal property to any person for any purpose, other than... for resale as such or as a physical component part of tangible personal property..."

B. That 20 NYCRR 526.6(c) provides:

(c) Resale exclusion. (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

C. That the gasoline and aircraft parts at issue herein were purchased by petitioner for use in fulfilling its agreement with Dowling College, i.e. providing flight instruction to students, and in its own flight instruction activities and were not purchased for resale pursuant to the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law or 20 NYCRR 526.6(c).


D. Notwithstanding the prior audit, the petitioner has failed to show that it was advised by the Audit Division that its purchases of gasoline and aircraft parts were not subject to tax.

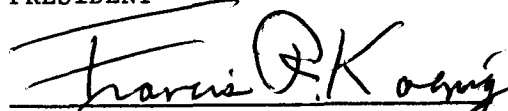
E. That the petition of Mid Island Air Services, Inc. is hereby denied.


DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 319 373 637

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to <i>Mid Island Air Service Inc.</i>	
Street and No. <i>McArthur Airport</i>	
P.O., State and ZIP Code <i>Ronkankama, N.Y. 11779</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	