

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-85(29)S
Sales Tax
July 26, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S841026A

On October 26, 1984 a Petition for Advisory Opinion was received from John B. Pike and Son, Inc., One Circle Street, Rochester, New York 14607.

The issue raised is whether two airplanes purchased by Petitioner, in June and October 1983 respectively, are exempt from New York State and local sales and use tax by reason of their being purchased solely for resale.

In June, 1983, Petitioner purchased a Rockwell 500 S Shrike Commander aircraft. No sales tax was paid by Petitioner on this purchase.

On October 7, 1983 Petitioner entered into a sales agreement with a vendor called the Airplane Company. Petitioner traded-in the Rockwell 500 S, plus a stated amount of cash, for a 1975 Rockwell Turbo Commander 690 A aircraft. The aircraft was delivered to Petitioner in Rochester, New York on October 17, 1983.

Petitioner states that it had agreed in principle with one Thomas Judson, Jr. to the purchase and lease-back of the Rockwell 690A prior to its purchase. Petitioner states further that the consummation of the sale and the lease-back did not occur until December 29, 1983 because of the time required by its lawyers to draft and finalize all the necessary paperwork. During the time from the date of purchase of the Rockwell 500 S aircraft to its trade-in, and from the time of purchase of the 1975 Rockwell 690A to its sale to Thomas Judson, Jr., Petitioner used both aircraft to transport corporate personnel on company business.

Petitioner avers that the 1975 Rockwell 690A was purchased for the sole purpose of reselling and leasing it back. Petitioner maintains that the identity of the re-purchaser, Thomas Judson, Jr., was known to it at the time of initial purchase and there was no purpose for the purchase (such as corporate use in the interim) other than resale to Thomas Judson, Jr.

Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, with certain exceptions.

The Tax Law defines the term "retail sale", in part, as "[a] sale of tangible personal property to any person for any purpose other than (A) for resale as such. . .". Tax Law 1101(b)(4)(i).

Petitioner has established no basis whatsoever for concluding that Petitioner's purchase of the Rockwell 500 S Shrike Commander aircraft in June 1983 is exempt from either State or local sales and use tax.

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The fact that Petitioner used the 1975 Rockwell Turbo Commander 690 A aircraft from the date of purchase on October 17, 1983 through the consummation of the sale and lease-back transaction on December 29, 1983, precludes qualification for a resale exemption for the October 17, 1983 purchase. To qualify for exemption for resale, the property to be resold must be purchased with the singular purpose of resale. Jacobs v Joseph, 282 App. Div. 622. In the instant case, Petitioner's 690 A aircraft was used for the additional purpose of transporting corporate personnel and is therefore subject to both State and applicable local sales and use tax. Matter of Airco Alloys, Division of Airco, Inc., Decision of the State Tax Commission, February 28, 1977, STH 77-26; Matter of Naum Brothers, Inc., Decision of the State Tax Commission, TSB-H-84(51).

Accordingly, neither airplane purchased by Petitioner is exempt from New York State and local sales and use tax by reason of their being purchased solely for resale.

DATED: July 3, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth herein.