

Taxability of Airlines under Section 184

On November 7, 1983, the United States Supreme Court denied a petition for a writ of certiorari filed by the State Tax Commission in Air Transport Association of America v. New York State Department of Taxation and Finance et al. This action by the United States Supreme Court leaves intact decisions of New York State courts holding that gross receipts from the foreign, interstate or intrastate air carriage of persons or from foreign or interstate air freight services can not be subjected to the tax imposed by Section 184 of Article 9 of the Tax Law because of a preemptive federal statute. However, the decisions do not prohibit the taxation of gross receipts derived from air carriage of freight and other property (except United States mail) entirely within this State, non-air transportation of persons, freight or property or non-transportation receipts, such as rental income, capital gains, interest, dividends and other investment income. Nor do the decisions effect the taxation of freight forwarders. Moreover, the capital stock tax imposed by Section 183 of Article 9 continues to be imposed on air transporters.