

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-06(22)S
Sales Tax
August 22, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S051117A

On November 17, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from JetBlue Airways Corporation, 19 Old Kings Highway South, Ste. 23, Darien, CT 06820. Petitioner, JetBlue Airways Corporation, submitted additional information pertaining to the Petition on February 22, 2006.

The issues raised by Petitioner are:

1. Whether the purchase of galley carts and parts for galley carts is subject to New York State and local sales tax.
2. Whether the purchase of laminated passenger seat-pocket safety instructions is subject to New York State and local sales tax.
3. Whether the purchase of blankets and pillows for on-board use by passengers is subject to New York State and local sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a commercial airline with its headquarters and major airport location, John F. Kennedy International Airport (JFK), in New York City. Due to the nature of aviation and possible consequences of a malfunction in the air, the operation of commercial aircraft is subject to strict rules. A commercial aircraft has an "airworthy" certificate and is required to have all items detailed on its certificate every time it flies in commercial service. Similarly, nothing may be added to an aircraft by a U.S. commercial airline unless it meets various standards and rules of the Federal Aviation Authority (FAA).

Galley carts are mobile carts used in aircraft to hold and dispense food and beverages. The carts are designed to be part of the aircraft's galley, and due to their weight and mobility, they are designed to minimize the possibility of becoming loose in flight. Each galley cart must be approved, and each sale to a commercial airline must be accompanied by an air worthiness certificate. Each repair to and repair part for a galley, including repairs to and parts for galley carts, requires an FAA form 8130, Airworthiness Approval Tag.

In the case of Petitioner's aircraft, the galley carts are part of the original equipment when the aircraft is purchased. Petitioner's carts, unlike those of many aircraft, are not pushed through the aircraft but are locked in place. Petitioner uses these carts to store food and beverages that are dispensed by flight attendants from trays.

Galley carts are included in the aircraft certification as required equipment. The aircraft is not to be flown in commercial service without them unless steps are taken to have the carts removed from the certification of equipment required in the operation of the aircraft.

14 CFR 121.571(b) mandates that each commercial passenger-carrying airplane carry, in convenient locations for use by every passenger, printed information cards supplementing the required oral safety briefing. Each card must contain information pertinent only to the specific type and model of airplane involved. All scheduled U.S. commercial airlines must follow these FAA rules. Petitioner complies by purchasing laminated passenger seat-pocket safety instructions from a supplier and using them on its flights.

Pillows and blankets are typically kept on Petitioner's aircraft for passenger comfort. As with other materials on board the aircraft, they are covered by the flammability standards of 14 CFR 25.853.

Applicable law and regulations

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

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(21) Commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines.

Opinion

Petitioner is a commercial airline with its headquarters and major airport location in New York City. Galley carts are part of the original aircraft equipment on Petitioner's aircraft when purchased. Petitioner purchases laminated passenger seat-pocket safety instructions (i.e., printed cards supplementing the required oral safety briefing) to fulfill the FAA mandate that each commercial passenger-carrying airplane must carry such information in locations convenient for every passenger. Petitioner also purchases pillows and blankets that are put on the aircraft for passenger comfort.

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Section 1115(a)(21) of the Tax Law provides an exemption from sales and use tax on purchases of commercial aircraft primarily engaged in intrastate, interstate, or foreign commerce; machinery or equipment to be installed on such aircraft; and property used by or purchased for the use of such aircraft for maintenance and repairs. It is presumed for purposes of this Opinion that Petitioner's aircraft qualify for exemption under section 1115(a)(21) of the Tax Law.

Galley carts and parts for galley carts purchased by Petitioner for installation on its commercial aircraft are exempt machinery or equipment within the meaning and intent of section 1115(a)(21) of the Tax Law. However, pillows and blankets purchased for passenger comfort and laminated passenger seat-pocket safety instruction cards are not considered to be equipment installed on the aircraft or property used for the maintenance or repair of the aircraft within the meaning and intent of section 1115(a)(21). Therefore, Petitioner's purchase of pillows and blankets and safety instruction cards delivered in New York are subject to State and local sales and use taxes pursuant to section 1105(a) of the Tax Law.

DATED: August 22, 2006

/s/
Jonathan Pessen
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NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.