

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

TSB-M-80 (4.1)S  
Sales Tax  
August 15, 1980

This memorandum should be attached to TSB-M-80(4)S dated May 15, 1980.

Air Cargo Containers

The following is an opinion of Counsel, dated January 23, 1980, dealing with the taxability of air cargo containers (including igloos) used exclusively to transport baggage and cargo by air.

These containers are made of aluminum or fiberglass and are suitable for use only in aircraft. They are designed for a specific wide bodied aircraft, for example, DC-10, L1011, 747 and A300, but can also be used on any other similar aircraft. Although the containers are usually certified by the Federal Aviation Authority, certification is not mandated where the storage hold of the aircraft is already Federal Aviation Authority certified.

Section 1115(a)(21) of the Tax Law provides an exemption from the sales and use tax for receipts from "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." (emphasis supplied)

Section 1105(c)(3) of the Tax Law excepts, from sales tax, receipts from the services of installing, maintaining, servicing or repairing" . . . 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 .... "

Regulation 528.9 defines "marine cargo containers" as:

". . . an article of transport equipment which is:

- (i) fully or partially enclosed to constitute a compartment intended for containing goods;
- (ii) of a permanent character and accordingly strong enough to be suitable for repeated use;
- (iii) specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;
- (iv) designed for ready handling, particularly when being transferred from one mode of transport to another;
- (v) designed to be easy to fill and to empty; and
- (vi) having an integral volume of one cubic metre or more."

It is Counsel's opinion that air cargo containers which are of a permanent character suitable for repeated use, and specifically designed to facilitate the carriage of goods on aircraft, are:

- 1) an integral part of such aircraft, and
- 2) compatible with the criteria outlined in section 528.9(a)(3) of the Sales and Use Tax Regulations.

Accordingly, it is Counsel's further opinion that receipts from air cargo containers sold to the commercial airline industry and receipts from repairs to such containers are exempt from the sales and use tax, pursuant to sections 1105(c)(3) and 1115(a)(21) of the Tax Law.