

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

TSB-A-92 (30)S
Sales Tax
March 26, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITIONER NO. S911106B

On November 6, 1991, a Petition for Advisory Opinion was received from Trans World Airlines, Inc., 100 S. Bedford Road, Mount Kisco, New York 10549.

The issue raised by Petitioner, Trans World Airlines, Inc., is whether its installation of a baggage conveyor system on leased property in an airline terminal building constituted a capital improvement and was, therefore, exempt from sales and use taxes.

Petitioner, a common carrier in the airline industry, purchased and had installed a customized baggage conveyor/handling/and sorting system at its terminal building at JFK Airport. The cost of the system exceeded \$3,250,000.00 and the installation substantially added to the value of the terminal building.

The installation of the system required the removal of sections of the floor in the terminal building, along with architectural, mechanical, plumbing and sprinkler modifications of the terminal building itself. The system was permanently bolted and/or welded to the terminal building structure. Extensive electrical work was required during installation to integrate the baggage system with the terminal's electrical system.

Petitioner intends that the baggage system will remain as permanent installation. Each system installed is custom designed for the particular location where it will be situated. The system is so customized that it cannot be removed without causing material damage to both the system and the terminal building.

Pursuant to Section 33 of the lease between Petitioner and The Port of New York Authority (hereinafter the "Port Authority"), Petitioner obtained approval from the lessor, dated October 12, 1990, for the installation of a baggage conveyor system. With respect to the terms and conditions of the approval, Petitioner and the Port Authority agreed to the following:

11. Title to any installation, improvement, alteration, modification, addition, repair or replacement resulting from work done pursuant hereto shall immediately upon completion vest in the Port Authority (or in the Port Authority's lessor, if any and if the agreement between such lessor and the Port Authority so provides) without execution of any further instrument. The Applicant shall not remove or change the same unless the Port Authority on or prior to the expiration or termination of the lease or permit described in Part I of this Application or within sixty (60) days after such expiration or termination, shall give notice to the Applicant requiring removal or restoration, in which case the Applicant (on or prior to the expiration or termination date or, if the notice is given after such date, then immediately after receipt of the Notice) shall complete the removal of all of the same (or as much

thereof as may be required by the notice) and the restoration (to the extent required by the notice) of the space affected by the work to the same condition as it was in prior to the commencement of the said work. If the Applicant shall fail to comply with such notice, the Port Authority may effect the removal and restoration and the Applicant shall pay the cost thereof to the Port Authority upon demand.

Section 1116(a) of the Tax Law provides, in part, as follows:

(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article.

(1) The state of New York or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons. . .

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

* * *

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen, or adding to, altering or improving real property, property or land of such an organization, as the terms real property, property or land defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

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Accordingly, since in the instant case the Port Authority is an organization described in Section 1116(a)(1) of the Tax Law and pursuant to Section 33 of the lease, title to the baggage conveyor system vests with the Port Authority upon completion of its installation pursuant to Section 1115(a)(15) of the Tax Law the purchase and installation of the baggage conveyor system by Petitioner is not subject to sales and use taxes. 450 Lexington Venture, Adv Op Comm T&F, March 7, 1989, TSB-A-89(8)S; Salamon, Inc., Adv Op Comm T&F, November 20 1989, TSB-A-89(46)S.

DATED: March 26, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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