

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

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Sales Tax
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STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960628B

On June 28, 1996, a Petition for Advisory Opinion was received from the Federal Express Corporation, 1980 Nonconnah Boulevard, Memphis, Tennessee 38132. Petitioner, Federal Express Corporation, submitted additional information pertaining to this petition on August 21, 1996.

The issue raised by Petitioner, Federal Express Corporation, is:

Whether certain machinery or equipment owned by Petitioner for use with respect to its aircraft is exempt from the New York State and local sales and compensating use tax pursuant to Section 1115(a)(21) of the Tax Law.

Petitioner presents the following facts.

Petitioner and its subsidiaries ("FedEx" or "Taxpayer") are engaged in the interstate transportation of property by air. Petitioner currently holds an "Air Carrier Certificate" issued by the Federal Aviation Administration and also, prior to economic deregulation of the airline industry, Petitioner operated under an All-Cargo Service Certificate issued by the Civil Aeronautics Board. Petitioner provides global transportation and distribution services through an international network consisting of extensive air and ground operations. Petitioner's system is designed as a multiple hub and spokes system. Packages are picked up at the shipper's location or at various drop-off locations and transported by vehicles to a ramp location and loaded onto an airplane or a truck. Packages are moved to Memphis, Tennessee, or to one of the regional hubs to be sorted. After the sort is finished, packages are reloaded and transported to their final destination. The final delivery is completed by vehicle at the destination city. Any non-air services, such as surface pick-up and delivery, are incidental to the primary aircraft transport of packages. The overwhelming majority of packages handled have a prior or subsequent movement by air during their transportation from origin to destination.

In order for Petitioner's aircraft to be properly equipped and maintained, it is necessary that certain machinery and equipment be purchased or used by Petitioner. Since Petitioner has many flights which originate or end in airports in New York, many items of aircraft machinery and equipment are purchased and/or used by the Petitioner in the state of New York.

Petitioner has submitted the following list and brief description of Ground Support Machinery and Equipment it believes qualify for exemption under section 1115(a)(21) of the Tax Law. Petitioner has also provided a more complete description of most of these items, including pictures and diagrams.

1. **Air Start Units.** The air start units are self-contained sources of pneumatic power intended to start aircraft engines not capable of starting themselves. One benefit of the units is the prolonged life of the aircraft starters. The air start units were purchased and are used by Petitioner in conjunction with its commercial aircraft.

2. **Baggage Carts.** These carts are used to transport cargo (analogous to baggage) to and from Petitioner's commercial aircraft. The baggage carts were purchased and are used by Petitioner in conjunction with its commercial aircraft.
3. **Belt Loaders.** Belt loaders are self-contained units with engine powered chassis and center-mounted conveyor belts used for loading and unloading baggage and freight onto the Petitioner's commercial aircraft and trucks. The belt loaders were purchased and are used by Petitioner in conjunction with its commercial aircraft.
4. **Carts, Feeder Scale.** Feeder Scale Carts are used to weigh packages which are loaded onto, and unloaded from, smaller so-called "feeder" aircraft. FedEx feeder aircraft consist primarily of Cessna 208A and 208B turbo-prop aircraft used to transport packages to smaller cities where package volumes do not warrant the use of large jet aircraft. The feeder scale carts are similar to the scales described in Item 28 below and it is essential to the safe operation of the feeder aircraft that the freight be weighed in order to ensure the proper balance of the aircraft and that the aircraft not be overloaded. Unlike the scales for the larger aircraft, the feeder scales are generally not used to weigh containers of cargo, since the feeders are generally loaded with loose freight which are not held in place. The one exception to this is that containers of overnight letters are weighed on the feeder scales and those containers are locked in place in the feeder aircraft similar to the containers used in the larger aircraft.
5. **Crewstairs.** The crewstairs are a free standing stairway allowing personnel to enter the aircraft. They are essential for both the operation and maintenance of the aircraft. Crewstairs are distinguishable from the "power stairs" used by passenger aircraft. Unlike passenger aircraft, Petitioner does not park its aircraft next to the terminal. In order to permit entry to and egress from the aircraft, freestanding crewstairs are required. Without use of the crewstairs, there could be no entry into the aircraft for any purpose including maintenance and repair.
6. **Dollies.** The dollies are rectangular trailers used to assist Petitioner in transferring containers of packages for loading and unloading. The dollies were purchased and are used by Petitioner in conjunction with its commercial aircraft.
7. **Wheel Change Dollies.** Petitioner's wheel change dollies are used to assist in the removal and installation of aircraft wheels. The wheel change dollies were purchased and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
8. **Engine Wash Cart.** An engine wash cart is a small unit consisting of a tank for liquids and small gasoline-powered pump. The cart is used to clean aircraft engines after removal from the aircraft prior to repair. The engine wash cart was purchased and is used by Petitioner in the maintenance and/or repair of its commercial aircraft.

9. **Fire Extinguisher.** The fire extinguishers are portable devices used to extinguish aircraft fires. They are located on the ramp adjacent to the aircraft to prevent fires during welding or the cutting of aircraft during repairs. The fire extinguishers were purchased and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
10. **Forklift.** The forklifts are self-propelled diesel or gasoline powered devices for lifting. They are used for loading and unloading air cargo containers on and off the aircraft. The forklifts (as described in Petitioner's exhibits submitted with its Petition) may also be used for lifting work platforms to the aircraft for mechanical repairs or for ground equipment repairs. The forklifts were purchased and are used by Petitioner in conjunction with its commercial aircraft. Without forklifts, the air cargo containers would be useless.
11. **Generator.** The generator is a portable power supply used for supplying electrical power to maintenance tools. The generator was purchased and is used by Petitioner in the maintenance and/or repair of its commercial aircraft.
12. **Ground Power Unit ("GPU").** A ground power unit is a self-contained unit that generates electricity for aircraft. The GPU provides power to aircraft for light, hydraulic pumps and radios while the aircraft is on the ground. The generator was purchased and is used by Petitioner in the maintenance and/or repair of its commercial aircraft.
13. **Heater Ducts.** Petitioner's heater ducts are portable, trailer mounted, gasoline or electric driven air heaters which are used to keep the avionics warm and occasionally to cure chemicals used in repairing the aircraft. The heater ducts were purchased and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
14. **Heating/Ventilation Unit ("HVU").** Heating/ventilation units are towable gasoline or diesel units constructed of metal and used for providing a large volume of safe, economical, clean heated or cooled air for aircraft while it is on the ground. The HVUs were purchased and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
15. **Hydraulic Test Stand.** The hydraulic test stand is used to supply hydraulic flow and pressure to perform tests of the hydraulic systems while they are being serviced. The hydraulic test stands were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
16. **Aircraft Jacks.** Petitioner's aircraft jacks are used for raising the main and/or nose landing gear or one of the wings for maintenance and repair of the aircraft. The aircraft jacks were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
17. **Pallet Jacks.** Petitioner's pallet jacks are used to manually raise pallets and platforms when a forklift is not available for loading, unloading and moving.

The pallet jacks were purchased and are used by Petitioner in conjunction with its commercial aircraft.

18. **Lavatory Trucks.** Petitioner's lavatory service trucks are used to service the restrooms on the aircraft. The lavatory truck was purchased and is used by Petitioner in conjunction with its commercial aircraft.
19. **Light Units.** The light units are self-contained, towable, wide area floodlights used to provide lighting in remote locations from the terminal for loading/unloading the aircraft and for maintenance and repairs. As discussed above (Item 5), Petitioner parks its aircraft at locations remote from the main terminal, thus requiring the use of flood lights to safely load, unload and repair the aircraft. The light units were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
20. **Loaders.** The loaders are self-propelled vehicles powered by a hydraulic pressure compensated axial piston pump. The loaders are used by Petitioner for loading and unloading containerized freight. The loaders were purchased and are used by Petitioner in conjunction with its commercial aircraft.
21. **Maintenance Stands.** The maintenance stands are towable platforms used to tow aircraft in need of servicing. Some stands provide gasoline air compressors and generators for tools and lights. The stands provide a platform from which maintenance operations may be performed on the engine while the engine is in place on the aircraft. Additionally, the stands can be used for engine removal and installation operations. The maintenance stands were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
22. **Maintenance Trucks.** The maintenance trucks are self-propelled, gasoline powered trucks with maintenance platforms. The trucks are used for maintenance and repair of the aircraft in the hangars and on the ramps. The maintenance trucks were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
23. **Manlifts.** The manlifts are self-contained lifting mechanisms with hydraulic pumps and steel platforms. They are normally moved to the aircraft in need of repair for the mechanics to reach the aircraft and perform necessary repairs. The manlifts were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
24. **Nitrogen Carts.** Nitrogen carts are used by Petitioner to service aircraft tires and hydraulic systems. The nitrogen carts were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
25. **Oxygen Carts.** The oxygen carts are essential as they can be used for emergency breathing. The oxygen carts are necessary for human safety with respect to the Petitioner's operation of its commercial aircraft.

26. **Oxygen/Nitrogen Carts.** An oxygen/nitrogen cart is a heavy metal cart which carries and dispenses compressed oxygen and nitrogen.
27. **Work Platforms.** Work platforms are used in the maintenance of aircraft and allow several maintenance people to work in the same area simultaneously. The work platforms were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
28. **Scales.** Scales are used to weigh freight for weight and balance purposes. The scales were purchased and are used by Petitioner in conjunction with its commercial aircraft. It is essential to the safe operation of the aircraft that the cargo containers be weighed in order to ensure the proper balance of the aircraft and that the aircraft will not be overloaded.
29. **Slave Pallets.** The slave pallets are free standing platforms used for loading and unloading aircraft. The slave pallets were purchased and are used by Petitioner in conjunction with its commercial aircraft.
30. **Snow Blower.** The snow blower is a piece of equipment with blades and a vacuum system for snow removal. It is important for proper maintenance of the aircraft engines that large amounts of snow not be ingested into the aircraft engine. Snow removal is also important in the prevention of aircraft accidents. The snow blower was purchased and is used by petitioner in conjunction with its commercial aircraft.
31. **Storage Racks.** The storage racks are stationary platforms used for storing empty or full air cargo containers. The storage racks were purchased and are used by Petitioner in conjunction with its commercial aircraft.
32. **Sweepers.** The sweepers are trucks with vacuum systems and large brushes used to collect debris and hold that debris for disposal. The sweepers are necessary equipment for proper maintenance of the aircraft in that they prevent ingestion of debris by the aircraft engines. The sweepers were purchased and are used by Petitioner in conjunction with its commercial aircraft.
33. **Tailstands.** Tailstands are hydraulic jacks used to support the tail of the aircraft while it is being loaded or unloaded. One purpose of the tailstands is to prevent the aircraft from sitting down on its tail, causing serious damage. This equipment is essential to the safe loading and unloading of the aircraft and maintaining the airworthiness of the aircraft.
34. **Towbars.** Towbars are used in moving the aircraft from one location to another. The towbars were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
35. **Transition Decks.** Transition decks consist of large platforms and are attached to aircraft loaders for ease in loading and unloading aircraft.

The transition decks were purchased and are used by Petitioner in conjunction with its commercial aircraft.

- 36. **Cargo Transporters.** Cargo transporters are vehicles used for loading and unloading the aircraft. The cargo transporters were purchased and are used by Petitioner in conjunction with its commercial aircraft.
- 37. **Tugs (Cargo Tugs).** Cargo tugs are self-propelled tractors used to tow the baggage cargo, containers and dollies to their desired locations. The cargo tugs were purchased and are used by Petitioner in conjunction with its commercial aircraft.
- 38. **Aircraft (Pushhack) Tugs.** These tugs are used to push or pull the aircraft to its desired location for maintenance and repair and for other purposes where the aircraft need to be moved. The tugs were purchased for and are used by Petitioner in the operation, maintenance and/or repair of its commercial aircraft.
- 39. **Water Service Truck.** Water service trucks are used for servicing aircraft drinking water systems. The water service truck was purchased and is used by Petitioner in conjunction with its commercial aircraft.
- 40. **Welders.** Welders are used for fusing metal together in repairing aircraft and ground support equipment. The welders were purchased for and are used by Petitioner in the maintenance and/or repair of its commercial aircraft.
- 41. **Yard mules.** Yard mules are diesel-powered trucks. They are used to transport trailers containing packages to facilitate loading packages onto the aircraft.

Applicable Law and Regulations

Section 1105 of the Tax Law provides, in relevant part:

... there is hereby imposed and there shall be paid a tax ... upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property ... or maintaining, servicing or repairing tangible personal property ... whether or not the services are performed directly ... or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(v) such services rendered with respect to commercial aircraft, machinery or equipment and property used by or purchased for the use of such aircraft as such aircraft, machinery or equipment, and

property are specified in paragraph twenty-one of subdivision (a) of section eleven hundred fifteen of this article; ...

Section 1115(a)(21) of the Tax Law exempts:

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.

Section 1101(b)(17) of the Tax Law as added by Chapter 309 of the Laws of 1996 provides a revised definition of commercial aircraft (effective 12/01/96) as follows:

Commercial aircraft. Aircraft used primarily (i) to transport persons or property, for hire, (ii) by the purchaser of the aircraft primarily to transport such person's tangible personal property in the conduct of such person's business, or (iii) for both such purposes.

Section 527.5(a)(3) of the Sales and Use Tax Regulations provides, in relevant part:

Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.

Technical Services Memorandum (TSB-M-80(4)S, May 15, 1980, entitled Exemptions for Commercial Aircraft, states in part:

The following list contains examples of purchases for qualifying exempt commercial aircraft and their taxable status, designated by "E" for exempt and "T" for taxable:

Purchases for Qualifying Exempt Commercial Aircraft

Aircraft for use in transporting persons or property for compensation primarily engaged in intrastate, interstate or foreign commerce.	E
Parts and accessories.	E
Helicopters used primarily to transport persons for compensation intrastate, interstate or foreign commerce.	E
Equipment and machinery purchased or rented for use in the maintenance of qualifying exempt commercial aircraft.	E
Maintenance and line services.	E

Fuel, fueling and defueling, oil, grease and other supplies.	E
De-icing.	E
Initial installation of equipment or accessories on aircraft.	E
Refurbishing interior of aircraft.	E
Food or drink sold to airlines for in-flight consumption.	E
Repairs (labor and parts).	E
Flight simulators for airlines.	E
Jet air start charge.	E
Baggage train charge - transport baggage between aircraft or terminal.	E
Baggage conveyor charge - transport baggage between aircraft or baggage train.	E
Baggage handling charge.	E
Aircraft cleaning charge.	E
Engine generator charge	E
Engine preheat charge - preheat aircraft engines, prior to start of engines.	E
Generator charge - to provide electrical service while aircraft is shut down.	E
Fresh water charge for the service of placing fresh water on aircraft.	E
Lavatory service truck charge - used to remove refuse from aircraft, but not from airport holding tanks.	E
Power stairs charge - used by passengers and crew to board and leave aircraft.	T
Garbage disposal charge - to remove garbage from aircraft, but not trash removal from terminals or dumpsters.	E
Tickets, labels, tags.	T
Time tables and schedules.	T
Forms and stationery.	T

In-flight paper supplies.	T
Uniforms.	T
Manuals, guides and advertising materials.	T
Air cargo containers, permanent.	E
Igloos, permanent	E
Repairs to air cargo containers and igloos	E

Technical Services Memorandum (TSB-M-80(4.1)S) states in part:

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.

* * *

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. (Section 528.9(a)(3) amended November 18, 1987, became current section 528.9(a)(2)).

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.

Opinion

Petitioner currently holds an "Air Carrier Certificate" issued by the Federal Aviation Administration and also, prior to economic deregulation of the airline industry, Petitioner operated under an All-Cargo Service Certificate issued by the Civil Aeronautics Board. Consequently, aircraft owned by Petitioner qualifies as "commercial aircraft" for purposes of Section 1115(a)(21) of the Tax Law. Further, since Petitioner's commercial aircraft is primarily engaged in intrastate, interstate or foreign commerce, Petitioner's aircraft qualifies for exemption under Section 1115(a)(21). Therefore, purchases of machinery or equipment to be installed on Petitioner's aircraft, and tangible

personal property purchased or used by Petitioner to maintain or repair its aircraft, will be exempt from New York State and local sales and compensating use taxes.

Petitioner notes in its Petition that in certain instances, TSB-M-80(4)S identifies as exempt a service, or "charge," provided by virtue of a particular type of property. For example, TSB-M-80(4)S lists "jet air start charges" and "baggage train charges" as exempt. Petitioner contends that where a particular charge is listed as exempt, the underlying property which provides that service also should be exempt. Petitioner's reliance on TSB-M-80(4)S for purposes of exempting items such as baggage carts, belt loaders, dollies, forklifts, loaders, slave pallets, storage racks, transition decks, cargo transporters, cargo tugs and yard mules is misplaced. Although the services that are provided by means of these items may not be taxable, the items themselves may not be purchased exempt from tax. The Department in drafting TSB-M-80(4)S determined that charges such as baggage train charges, baggage conveyor charges and baggage handling charges were not subject to tax because these are incidental charges for a transportation service, which is not an enumerated service subject to tax under section 1105(c) of the Tax Law. The Department, however, did not consider such charges to be service charges for the maintenance or servicing of an aircraft within the meaning of section 527.5(a)(3) of the Sales and Use Tax Regulations, exempt under section 1105(c)(3)(v) of the Tax Law. Accordingly, since the equipment used in performing such services is not used in maintenance or repairs, the equipment itself does not qualify for the purchase exemption under Section 1115(a)(21) of the Tax Law.

Based upon the above cited Law, Regulations and Department Memoranda, Items numbered 2, 3, 4, 6, 17, 20, 28, 29, 30, 31, 32, 35, 36, 37 and 41 of the Petition do not meet the requirements for exemption provided in Section 1115(a)(21) of the Tax Law and thus are properly subject to New York State and local sales and use taxes. These Items are not installed on Petitioner's aircraft and are not used to maintain or repair Petitioner's aircraft.

Items numbered 1, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24, 25, 26, 27, 33, 34, 38, 39 and 40 of the Petition all fall within the exemption provided by section 1115(a)(21) of the Tax Law and would be exempt from the New York State and local sales and use taxes.

Items numbered 5, 10 and 19, if they are in fact used in the maintenance, servicing and repair of Petitioner's aircraft could qualify for exemption under section 1115(a)(21) of the Tax Law. However, where these items are only used for purposes of permitting entry and egress by flight crew personnel (Item 5), loading or unloading cargo or general warehouse use (Item 10), or merely lighting remote areas for only loading or unloading of the aircraft (Item 19), all the items would be subject to the New York State and local sales and use taxes.

DATED: December 26, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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