

M e m o r a n d u m**715.0230**

To: Out-of-State – Auditing (DMA)

Date: June 27, 1973

From: Tax Counsel (JHM) – Headquarters

Subject: [A], Inc.
XXX --- Avenue
--- ---, NY XXXXX

SY OHB XX XXXXXX

We have reviewed the memorandum of Auditor M. R. Kotkin which was sent to us by you on June 7. The auditor asks whether certain listed supplies purchased by [A] for in-flight passenger service are subject to local tax. We assume that these supplies were purchased out of state by [A], brought into state, and then as needed placed on aircraft.

The items in question are exempt from city use tax but are exempt from county use tax if the public utilities exemption is available. Thus the question is whether these supplies are “directly used” in the transportation of persons and used “exclusively” in such operations. The memorandum refers to annotations 715.0200 and 715.0220 which state that alcoholic beverages, books and playing cards are not so used. Annotation 715.0340 states that “commissary supplies” used in railroad dining cars are “directly used.” The rationale of these annotations and Regulation 1804 is this: Those items reasonably necessary for the physical operations of the aircraft (i.e., fuel, repair parts, etc.) and those items reasonably necessary for the sustenance of passengers in flight can be considered as “directly used.” Included in this later category are food service and similar commissary supplies; however, alcoholic beverages, tobacco products, playing cards, and books are excluded. Also excluded are glasses, stirrers, napkins, etc., used in the service of alcoholic beverages.

Section 6009.1 exempts from state and local use tax those items which are only stored here, used exclusively out of state, and not returned here. This would include one-time use items such as paper towels, paper napkins, etc.

JHM/ab