

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BROOKHAVEN BUS LINES CORP.	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period December 1, 1976	:	
through November 30, 1979.	:	

Petitioner, Brookhaven Bus Lines Corp., 2 Honey Lane, Box B, Miller Place, New York 11764, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1976 through November 30, 1979 (File No. 28465).

A formal hearing was commenced before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 8, 1983 at 1:30 P.M. and concluded at the same offices before Arthur Bray, Hearing Officer, on September 27, 1983 at 1:30 P.M., with all briefs and exhibits to be filed on or before March 9, 1984. Petitioner appeared by Stanley Person & Co. (Stanley Person, C.P.A.) at the hearing and by Damashek & Bezoza (Ira S. Bezoza, Esq., of counsel) on the brief. The Audit Division appeared by John P. Dugan, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner was entitled to a credit of sales tax paid upon the purchase of buses which petitioner had intended to lease to another bus service.

FINDINGS OF FACT

1. Petitioner, Brookhaven Bus Lines Corp., filed New York State and local sales and use tax returns for the periods covering December 1, 1976 through

November 30, 1979. The total amount of sales and use taxes reported due during these periods was \$26,917.49. However, on the first quarterly return during the periods in issue, petitioner claimed a credit in the amount of \$53,747.00. On each of the succeeding returns petitioner reduced the credit claimed by the amount of sales and use taxes reportedly due. Therefore, petitioner did not remit any tax with its sales and use tax returns.

2. On November 1, 1979, the Audit Division advised petitioner that, having failed to reply to requests for information, the claim for refund of sales tax in the amount of \$53,747.00 was denied.

3. On January 28, 1980, petitioner's accountant sent a telegram to the Audit Division requesting a hearing pursuant to section 1139(a) of the Tax Law. This telegram has been accepted as a petition challenging the denial of the claim for refund.

4. The Audit Division also issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner assessing a tax due of \$26,917.49, plus interest due of \$6,277.49, for a total amount due of \$33,194.98. The Notice stated, in pertinent part, that the assessment was issued for tax which was erroneously taken as credits on returns filed for the periods December 1, 1976 to November 30, 1979. A petition challenging this assessment was not filed within the statutory 90 day period.

5. Petitioner was in the business of providing transportation to school districts.

6. Until the end of June, 1976, the only transportation contract petitioner had was with Central School District Number 12 in Middle Island, New York. This contract, which commenced during the 1971 through 1972 school year, was extended yearly until June, 1976. The contract provided, initially, that

petitioner was to provide a fleet of twenty-four general purpose buses and four "pick-up/take-home" buses.

7. In or about June, 1975, petitioner engaged in discussions with Coram Bus Service, Inc. ("Coram"). These discussions involved a proposal that petitioner lease between twenty and twenty-five school buses to Coram. Thereafter, petitioner purchased the twenty buses needed to satisfy the proposed contract between it and Coram.

8. On or about June 30, 1975, petitioner purchased ten buses from Ramp Motors, Inc. The total price of the buses was \$124,334.00. This amount included sales tax of \$8,134.00. At or about the same time, petitioner purchased an additional ten buses from Metropolitan Equipment Corp. The total price of the ten buses from Metropolitan Equipment Corp. was \$123,050.00 which included sales tax of \$8,050.00.

9. On or about July or August, 1975, Coram decided not to enter into the proposed contract with petitioner.

10. The twenty buses which petitioner purchased were delivered between July and October, 1975. However, since Coram decided not to enter into the proposed contract with petitioner, the buses remained idle.

11. On September 1, 1976, petitioner executed contracts to lease buses to Better Bus Co., Inc. and Suburbia Bus Corp. The buses used to fulfill these contracts included the twenty buses which petitioner purchased in contemplation of its contract with Coram. Petitioner had not used these buses in the performance of any contract prior to their being leased to Better Bus Co., Inc. and Suburbia Bus Corp.

CONCLUSIONS OF LAW

A. That, except as otherwise provided in Article 28 of the Tax Law, the sales tax is imposed on the retail sale of tangible personal property [Tax Law §1105(a)]. A sale is defined as including a "...rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor..." [Tax Law §1101(b)(5)]. However, a retail sale does not include a sale for resale [Tax Law §1101(b)(4)(i)(A)].


B. That, based upon the facts presented herein, petitioner has established that the twenty buses noted in Finding of Fact "8" were purchased for resale within the meaning of section 1101(b)(4)(i)(A) of the Tax Law. Accordingly, petitioner was entitled to claim a credit on its sales and use tax returns in the amount of \$16,184.00.


C. That the petition of Brookhaven Bus Lines Corp. is granted only to the extent of Conclusion of Law "B" and is, in all other respects, denied.


DATED: Albany, New York

NOV 09 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER