

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
INTERRENT TRANSPORTATION, INC.	:	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 September 1, 1979	:	
through August 31, 1982.	:	

Petitioner, InterRent Transportation, Inc., c/o RAC Holding Co., 112 South Bay Road, North Syracuse, New York 13212, filed a petition 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 September 1, 1979 through August 31, 1982 (File No. 45165).

A formal hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on November 26, 1984 at 1:15 P.M. Petitioner appeared by Arnold J. Hodes, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUES

I. Whether petitioner paid the proper amount of sales tax on its receipts from the rental and lease of motor vehicles.

II. Whether the use of certain automobiles and shuttle buses by petitioner was subject to use tax.

III. Whether the gasoline consumed in such vehicles was subject to use tax.

FINDINGS OF FACT

1. Petitioner, InterRent Transportation, Inc., was engaged in the automobile leasing business. Petitioner leased vehicles on a long-term basis as well as day-to-day rentals.

2. On March 18, 1983, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1979 through August 31, 1982 for taxes due of \$51,970.03, plus interest of \$11,670.13, for a total of \$63,640.16.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period September 1, 1979 through November 30, 1979 to March 20, 1983.

4. An audit of petitioner's books and records disclosed additional sales and use taxes due amounting to \$58,726.10. Petitioner executed a consent to fixing of tax whereby it agreed to a liability of \$6,756.07. The disagreed portions of the audit (\$51,970.03) were as follows:

(a) additional sales tax due on automobile leases	\$43,884.05
(b) additional sales tax due on automobile sales	1,270.01
(c) use tax due on personal use of rental vehicles by the corporation	3,450.72
(d) use tax due on gasoline consumed for personal use of corporate vehicles	3,365.25

The Audit Division examined daily and monthly rental invoices and found that petitioner charged the customer, in addition to the rental or lease fee, a percentage equal to the sales tax rate in effect in the jurisdiction where the customer was located. Petitioner did not charge this percentage to customers who had issued a tax exemption certificate. These charges were posted to the general ledger in an income account entitled "rental surcharges". Petitioner considered that the total amount collected from the customer included sales

tax. In computing taxable sales, petitioner combined the surcharge account with the lease and rental income accounts and that total was multiplied by 82 percent to arrive at the amount subject to tax (20 NYCRR 530.4(b) provides that 82 percent of the total rental or lease charge is the taxable base where the lessor paid all registration fees and insurance charges). Petitioner debited the "rental surcharge" account when it paid the sales tax and the balance in said account was considered other income.

The Audit Division determined that the percentage added to the rental or lease charge was sales tax rather than a surcharge. This determination was based on the following reasons:

- (a) the percentage of surcharge was the same as the sales tax rate and no such charge was made to tax exempt customers;
- (b) the charge was not identified by petitioner on the invoice;
- (c) the Audit Division sent inquiries to several of petitioner's customers requesting a breakdown of the monthly lease charges. The responses indicated that sales tax was part of the charge.

Since the Audit Division deemed that petitioner collected tax from the customer on the total rental or lease charge, it did not allow the 82 percent computation for taxable sales. The additional tax due of \$43,884.05 was determined by deducting the sales tax paid on rentals and leases from the "rental surcharge" account.

5. The Audit Division also found on audit that petitioner sold five automobiles without collecting sales tax and the customers did not furnish an exemption certificate. This resulted in a liability of \$1,270.01. Following a Tax Appeals Bureau conference, this liability was revised to \$203.00. Petitioner agreed to the revised amount.

6. For accounting purposes, petitioner charged depreciation expense on its vehicles to three categories: (1) lease vehicles; (2) rental vehicles; and (3)

administrative. The depreciation charged to the administrative expense was for three automobiles used by corporation officers and two shuttle buses used to transport customers to and from the airport. The automobiles used by the officers were also used as substitute vehicles when customers' automobiles were being repaired. The depreciation charges deducted on these vehicles were at the rate of 2 percent per month.

The Audit Division assessed use tax of \$3,450.72 on the amount of depreciation charged to administrative expense on the basis that it represented the value of the personal use of the vehicles by petitioner. Petitioner argued that the portion of depreciation applicable to the three automobiles when used as substitutes for other rental vehicles was not taxable. Petitioner did not establish the extent that the automobiles were used as substitute vehicles. Petitioner conceded the personal use of the vehicles by the corporate officers was taxable, and estimated the depreciation subject thereto was \$4,576.00 per year.

With respect to the shuttle buses, petitioner argued that they were a direct cost to the leasing function and therefore not subject to tax.

7. Petitioner's accounting system also allocated a portion of gasoline purchases to administrative expense. The Audit Division considered that such gas was consumed in the vehicles referred to in Finding of Fact "6" and assessed use tax thereon of \$3,365.25.

Petitioner maintained that the gas was purchased for resale and only that portion used by the corporation officers was taxable.

CONCLUSIONS OF LAW

A. That petitioner collected sales tax from its customers on the total rental and lease charge. Accordingly, petitioner was not entitled to compute

its taxable sales based on 82 percent of the charge as provided in 20 NYCRR 530.4(b). Petitioner was required to pay over the total tax collected pursuant to section 1137(iii) of the Tax Law.

B. That Tax Law §1101(b)(5) defines "sale, selling or purchase" as follows:

"Any transfer of title or possession or both, exchange or barter, 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..."

The Sales and Use Tax Regulations provide that:

"The terms 'rental, lease, license to use' refer to all transactions in which there is a transfer of possession of tangible personal property without a transfer of title to the property." 20 NYCRR 526.7(c)(1).

The Regulations further provide that:

"Transfer of possession with respect to a rental, lease or license to use, means that one of the following attributes of property ownership has been transferred:

- (i) custody or possession of the tangible personal property, actual or constructive;
- (ii) the right to custody or possession of the tangible personal property;
- (iii) the right to use, or control or direct the use of, tangible personal property." 20 NYCRR 526.7(e)(4).

Petitioner did not transfer possession of the shuttle buses to its customers; thus, there was no rental or lease. The buses were used by petitioner to transport customers to and from the airport and for such use the buses were subject to the tax imposed under section 1110 of the Tax Law.

The automobiles used by the corporate officers were also subject to use tax. Petitioner failed to establish that any portion of the depreciation charged to the administrative category was for vehicles used in the leasing or rental function of the business.

C. That since the automobiles and shuttle buses described in Finding of Fact "6" are taxable, the Audit Division properly assessed tax on the gasoline consumed in the operation of such vehicles.

D. That, in accordance with Finding of Fact "5", the additional taxes determined due on the sale of automobiles is reduced from \$1,270.01 to \$203.00.

E. That the petition of InterRent Transportation, Inc. is granted to the extent indicated in Conclusion of Law "D"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 18, 1983; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1985


PRESIDENT


COMMISSIONER


COMMISSIONER