

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Varsity Coach Corp. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1967-1972. :
_____ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Varsity Coach Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Varsity Coach Corp.
23-45 87th Street
Jackson Heights, NY 11369

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of March, 1984.

David Parchuck

James P. Hupel
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Varsity Coach Corp. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1967-1972. :
_____ :

AFFIDAVIT OF MAILING

State of New York }
 } ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Alan Warner, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan Warner
Nadel, Warner & Co.
342 Madison Ave.
New York, NY 10173

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
9th day of March, 1984.

David Parchuck

Annice A. Spadell
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Varsity Coach Corp. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1967-1972. :

AFFIDAVIT OF MAILING

State of New York }
 } ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Sheldon Rudoff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sheldon Rudoff
Cooper, Rudoff & Cooper
1625 Third Ave.
New York, NY 10028

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
9th day of March, 1984.

David Parchuck

James A. [Signature]

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 9, 1984

Varsity Coach Corp.
23-45 87th Street
Jackson Heights, NY 11369

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Alan Warner
Nadel, Warner & Co.
342 Madison Ave.
New York, NY 10173
AND
Sheldon Rudoff
Cooper, Rudoff & Cooper
1625 Third Ave.
New York, NY 10028
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
VARSITY COACH CORP. : DECISION
for Redetermination of Deficiencies or for :
Refunds of Corporate Franchise Tax under Article :
9-A of the Tax Law for the Years 1967 through :
1972. :

Petitioner, Varsity Coach Corp., 23-45 87th Street, Jackson Heights, New York 11369, filed petitions for redetermination of deficiencies or for refunds of corporate franchise tax under Article 9-A of the Tax Law for the years 1967 through 1972 (File No. 24758).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 13, 1983 at 1:15 P.M., with all briefs to be submitted by August 6, 1983. The petitioner appeared by Cooper, Rudoff & Cooper (Douglas A. Cooper, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether certain receipts for transportation services received from nonprofit organizations were excludible from entire net income under section 208(9)(a)(4) of the Tax Law.

FINDINGS OF FACT

1. For the years at issue, petitioner, Varsity Coach Corp., filed New York State corporation tax reports under Article 9-A of the Tax Law on which it deducted all receipts from schools and nonprofit organizations.

2. The Audit Division completed a field audit of petitioner on September 27, 1971. The examiner found that petitioner chartered buses from Varsity Bus, Inc. and Varsity Transit, Inc., related companies. During the school months, the buses were used for "school bus activities". During the vacation period, the buses, according to the auditor, were placed at the disposal of various nonprofit corporations and associations organized exclusively for religious, charitable or educational purposes, including departments of the federal, state and city governments, on a daily, weekly or monthly basis. The examiner concluded that the amounts petitioner received from the nonprofit organizations for transportation during the vacation period were not from the operation of school buses. Consequently, the examiner added back the income deducted by the petitioner from entire net income when it computed its tax.

3. Based upon the field audit, the Audit Division issued the following statements of audit adjustment:

<u>Period Ended</u>	<u>Deficiency in Tax</u>
December 31, 1967	\$ 8,851.48
December 31, 1968	19,842.30
December 31, 1969	11,271.69
December 31, 1970	12,589.92
December 31, 1971	27,763.22
December 31, 1972	10,901.30

Although the actual Notices of Deficiency were not offered in evidence, petitioner has not claimed that it did not receive such notices and, in fact, filed petitions for redetermination of deficiencies or for refunds.

In addition to the abovementioned statements of audit adjustment, the Audit Division issued a statement of audit adjustment for the period ended

December 31, 1966 for a credit of tax of \$17,586.96 based on a reduction in federal taxable income as reported on form CT-3360.

4. At the hearing, the Audit Division claimed that the amount of tax due from petitioner was as follows:

<u>Year</u>	<u>Amount</u>
1967	\$ 2,269.00
1968	13,558.00
1969	9,741.00
1970	12,590.00
1971	27,753.00
1972	<u>10,901.00</u>
TOTAL	\$76,812.00 (plus interest)

The Audit Division acknowledged that petitioner was entitled to a refund of tax of \$17,586.96, plus interest, for the year 1967.

Petitioner contended that the tax should in no event exceed \$54,051.54 and submitted a proposed Withdrawal of Petition and Discontinuance of Case form which had evidently been prepared by a Tax Appeals Bureau Conferee. The withdrawal was apparently never executed, however, and the basis for the proposed reduction was never explained.¹

5. Petitioner's basic argument is that section 208(9)(a)(4) of the Tax Law "simply provides that income received from school districts, as well as charitable or religious organizations, by operators of school buses, is exempt from 'entire net income'" (emphasis as in petitioner's memorandum of law).

¹ The \$54,051.54 appears to be the \$76,812.00 in tax due, less the refund of \$17,586.96 and interest on the refund.

CONCLUSIONS OF LAW

A. That section 208(9)(a)(4) of the Tax Law excludes from entire net income:

"Income and deductions with respect to amounts received from school districts and from corporations and associations organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual for the operation of school buses".

B. That section 3.11(b)(2) of the Ruling of State Tax Commission With Respect to the Franchise Tax on Business Corporations Imposed By Article 9-A of the Tax Law, dated March 15, 1962² provided in part that entire net income is to be computed by (inter alia) deducting from Federal taxable income:

"All amounts received for the operation of school buses from school districts and from nonprofit corporations and associations, organized and operated exclusively for religious, charitable or educational purposes, less any deductions allowed in computing Federal taxable income which are directly or indirectly attributable to such receipts."

Section 3.11(c) of the same Ruling³ provided, in part, as follows:

"For purposes of this section, receipts for the operation of school buses means receipts for the transportation of pupils, teachers and other persons acting in a supervisory capacity to and from school or school activities in omnibuses subject to the requirements of subdivision 20 of section 375 of the Vehicle and Traffic Law...".⁴

C. That petitioner's interpretation of the statute is incorrect. The exclusion applies to amounts received for the operation of school buses when they are used as such, i.e., transporting pupils, teachers and other supervisory

² The present counterpart of this section is 20 NYCRR 3-2.4(a)(3).

³ The present counterpart of this section is 20 NYCRR 3-2.4(b).

⁴ Subdivision 20 of section 375 of the Vehicle and Traffic Law establishes certain requirements for school bus markings and signal lamps and signs.

personnel to and from school or school activities, and not when they are used for other transportation purposes, even though the other transportation may be in the service of a nonprofit organization.


D. That the deficiencies in tax for the years 1967 through 1972 are to be reduced to the amounts set forth in Finding of Fact "4"; that petitioner is to be given credit for a refund of \$17,586.96, plus interest, for 1966; and that the petitions of Varsity Coach Corp. are otherwise denied and the deficiencies, as reduced, are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER