

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SUBURBAN TRANSIT CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Highway Use
Taxes under Article ~~(x)~~ 21 of the
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ April :
1970 through March 1974.

State of New York
County of Albany

Carmen Mottolese, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 19th day of August, 1976, she served the within
Notice of Decision by ~~(certified)~~ mail upon Suburban Transit
Corporation ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Suburban Transit Corporation
750 Somerset Street
New Brunswick, New Jersey 08901
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) 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

19th day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SUBURBAN TRANSIT CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article(s) 21 of the :
Tax Law for the Year(s) or Period(s) ~~XXXXXX~~ April :
1970 through March 1974.

State of New York
County of Albany

Carmen Mottolese, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 19th day of August, 1976, she served the within
Notice of Decision by ~~certified~~ mail upon Alan Wasserman, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Alan Wasserman, Esq.
Wilentz, Goldman & Spitzer, Esqs.
252 Madison Avenue
Perth Amboy, N.J. 08862

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) 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

19th day of August, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

August 19, 1976

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

Suburban Transit Corporation
750 Somerset Street
New Brunswick, New Jersey 08901

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(x) **510** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **30 days**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

[Signature]
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
SUBURBAN TRANSIT CORPORATION	:	DECISION
	:	
for a Hearing to Review a Determination	:	
of Highway Use Tax Due under Article 21	:	
of the Tax Law for the Period April 1970	:	
through March 1974.	:	

Suburban Transit Corporation, 750 Somerset Street, New Brunswick, New Jersey 08901, filed an application pursuant to section 510 of the Tax Law for a hearing to review a determination of highway use taxes due under Article 21 of the Tax Law for the period April 1970 through March 1974.

The determination under review is for fuel use tax under section 503-a of Article 21 of the Tax Law and was asserted by an assessment issued August 15, 1974 in the amount of \$9,993.70 plus penalty and interest of \$2,085.59 for a total of \$12,079.29. Of these amounts, the Bureau has cancelled \$2,402.91 and penalty and interest of \$517.30 to arrive at a redetermination of \$7,590.79 plus penalty and interest of \$1,568.29 for a total of \$9,159.08 with further interest to February 20, 1975 of \$455.45

for a total of \$9,614.55. The penalty included in these figures is for late filing of returns for two quarters. The principal amount of \$7,590.79 has been paid.

A hearing was duly held on January 14, 1976 at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The applicant was represented by Alan Wasserman, Esq. of Wilentz, Goldman & Spitzer. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the fuel use tax applies to fuel used by buses when traveling within the confines of a terminal area owned and operated by the Port of New York Authority. It is stipulated that the amount of tax here in issue is \$1,559.12.

FINDINGS OF FACT

1. Suburban Transit Corporation (hereinafter referred to as Suburban) is a motor bus carrier with its principal office at 750 Somerset Street, New Brunswick, New Jersey. Suburban runs buses from New Jersey to New York City. At the New York end of its route, it uses the terminal owned and operated by the Port of New York Authority and located at 111 Eighth Avenue, Manhattan. They also run charter buses in both New Jersey and New York.

2. Suburban's buses to New York City run a fixed route from New Jersey through the Lincoln Tunnel, onto Dyre Avenue, New York City and then into the Port Authority terminal via a ramp from the street which is part of said terminal. On leaving the terminal, they follow an exit ramp directly into the entrance to the Lincoln Tunnel. The entire round trip mileage on the ramps and in the terminal is .85 miles.

3. The entrance ramps to the terminal here in question are posted with signs advising "For Buses Only".

4. Suburban has a right to use the terminal under an agreement with the Port Authority. This provides that: "the Port Authority shall license the carrier to use space and shall provide services at the terminal...". The space involves berth space, dispatcher's booth space, ticket booth space and ticket accounting office space; the services include waiting rooms, toilet facilities, etc. The carrier's right to use the berth space is closely restricted and includes the duty to remove any bus after thirty minutes.

5. The charges for use of the space are calculated by a formula based upon a specific charge for each departing bus carrying passengers and a separate charge for ticket booth and ticket accounting office space computed in any one of three alternative

ways. In 1973 these charges totaled \$201,186.96 and in 1974, \$213,460.99.

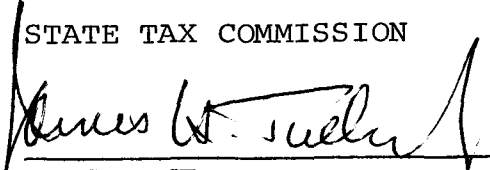
CONCLUSIONS OF LAW

A. That the mileage on the ramps and inside the terminal of the Port Authority bus terminal is not subject to tax. While it is true that the mileage here in question is owned and maintained by a governmental agency, it is also true that the tax revenues of this State are not used directly or indirectly in the maintenance of this space. This space is not open to the public generally and is in fact operated in the same manner as privately owned premises.

B. That the determination under review is erroneous in part and shall be recomputed in accordance with this decision.

DATED: Albany, New York
August 19, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER