

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

GENSER TRUCKING CO., ^{of} INC. AND LEONARD
GENSER, INDIVIDUALLY & AS A CORPORATE
OFFICER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s) or~~ Period ~~(s)~~
June 2, 1972.

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 28th day of September, 1976, she served the within

Notice of Determination by ~~(certified)~~ mail upon Inc., & Leonard Genser, Genser Trucking Co.,
Individually and as a
Corporate Officer ~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Genser Trucking Co., Inc. &
Leonard Genser, Individually and
as a Corporate Officer
10 Hampton Road

Great Neck, N.Y. 11020
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)~~
~~XXXXXX~~ 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

28th day of September, 1976.

Carmen Mottolese

Janet Bach

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GENSER TRANSPORTATION CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(s)~~ :
June 2, 1972.

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 28th day of September , 1976 , she served the within
Notice of Determination by ~~(certified)~~ mail upon Genser Transportation
Corp. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Genser Transportation Corp.
1150 Longwood Avenue
Bronx, New York

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)~~
~~XXXXXX~~ 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

28th day of September , 1976.

Carmen Mottolese

Janet Brach

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

GENSER TRUCKING CO., INC. & LEONARD :
GENSER, INDIVIDUALLY & AS A CORPORATE OFFICER :
AND GENSER TRANSPORTATION CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(s)~~ :
June 2, 1972.

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 28th day of September , 1976 , she served the within
Notice of Determination by ~~(certified)~~ ~~XXXXXX~~ mail upon Murray S. Selby, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Murray S. Selby, Esq.
233 Broadway
New York, N.Y. 10007

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.

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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

28th day of September , 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

September 28, 1976

ADDRESS YOUR REPLY TO

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

Genser Trucking Co., Inc. &
Leonard Genser, Individually &
as a Corporate Officer
10 Hampton Road
Great Neck, N.Y. 11020

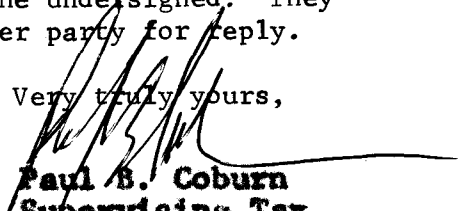
Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
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,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

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September 28, 1976

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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	:	
	:	
GENSER TRUCKING CO., INC.	:	
and	:	
LEONARD GENSER, Individually	:	DETERMINATION
and as a Corporate Officer	:	
for a Hearing to Review a Determination	:	
of Sales and Use Tax due or a Denial of	:	
a Refund of Sales and Use Tax under	:	
Articles 28 and 29 of the Tax Law.	:	

In the Matter of the Application	:
	:
of	:
	:
GENSER TRANSPORTATION CORP.	:
	:
for a Hearing to Review a Determination	:
of Sales and Use Tax due or a Denial of	:
a Refund of Sales and Use Tax under	:
Articles 28 and 29 of the Tax Law.	:

Applicants, Genser Trucking Co., Inc. and Leonard Genser, individually and as a corporate officer, filed an application under section 1138 of the Tax Law for a hearing to review a determination of sales taxes due under Article 28 of the Tax Law. Applicant, Genser Transportation Corporation filed an application under section 1138 of the Tax Law for a hearing to review a notice and demand for sales taxes due under Article 28 of the Tax Law.

The determination against Genser Trucking Co., Inc. and Leonard Genser and the determination against Genser Transportation Corp. were asserted on April 17, 1975 and each is in the amount of \$10,500.00 plus penalty and interest of \$3,675.00 for a total of \$14,175.00.

A hearing was duly held on November 19, 1975, at 1:15 P.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The applicants appeared by Murray S. Selby, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of counsel). The record of said hearing has been duly examined and considered.

ISSUE

Whether a transaction which occurred on June 2, 1972, between two corporations constituted a sale of personal property on which a sales tax is due is the issue in this case.

FINDINGS OF FACT

1. Genser Trucking Co., Inc. was incorporated in New York State in 1926. It had a principal office at One World Trade Center, New York, New York. Its shareholders were Leonard Genser and his uncle, Irving Genser. The uncle died around 1970 and his executrix and sole legatee, Sally Genser, became the owner of his stock. This corporation owned about thirty tractors and thirty trailers.

2. The principal customer of Genser Trucking., Inc. was the Penn Central Railroad which, when it went bankrupt, owed Genser about \$500,000.00. Genser got behind in its withholding taxes. On October 22, 1970, Federal tax assessments were issued against Genser Trucking Co., Inc. in the amount of \$236,572.28 and a Notice of Federal Tax Lien was filed. On December 10, 1971, a further assessment was made in the amount of \$1,939.84 and a Notice of Lien was filed. On June 7, 1972, Genser Trucking Co., Inc. paid the Internal Revenue Service \$70,000.00 and executed a series of 24 notes aggregating \$80,000.00 for a total of \$150,000.00. Some payments on this debt were made by another corporation, United Terminals, Inc. As of April 7, 1973, the debt due to the Internal Revenue Service was still open. Certain releases of Federal tax liens were filed on April 11, 1973.

3. Genser Transportation Corporation was incorporated in New York on June 6, 1972. Its principal office was in Kings County. Its shareholders were apparently Leonard Genser, Sally Genser, Irving Held and Milton Held. The Helds and the Gensers were stockholders in United Terminals, Inc., a firm which apparently had some business relationship with Genser Trucking Co., Inc.

4(a). On October 19, 1972, Genser Trucking Co., Inc. was renamed Genser Industries, Inc. On October 16, 1974, this name was changed back to Genser Trucking Co., Inc.

4(b). On December 26, 1972, Genser Transportation Corp. was renamed Genser Trucking Co., Inc. On October 16, 1974, this name was changed back to Genser Transportation Corp.

5(a). On June 5, 1972, a notice of bulk sale was filed with the Sales Tax Bureau. This stated that the sale was a "Sale of Motor Vehicles only. Consent of the IRS to be obtained before Title formally passes", that the scheduled date of sale was "subject to consent of IRS", and that the total sales price was \$150,000.00. The vendor was named as Genser Trucking Co., Inc. and the purchaser was named as Genser Transportation Corp.

5(b). A 1972 United States corporation income tax return (form 1120) filed by Genser Trucking Co., Inc. (under the new name of Genser Industries, Inc.) showed a sale of trucks, tractors, trailers and service cars for a gross sales price of \$121,992.00.

5(c). The applicants have not submitted any documents pertaining to the June, 1972 transaction.

5(d). It is found that a transaction occurred in June, 1972 which, at least in form, was a sale of vehicles by Genser Trucking Co., Inc. to Genser Transportation Corp.

6. Genser Trucking Co., Inc. received \$150,000.00 in the June, 1972 transaction. This was paid over to the Internal Revenue Service.

7. The trucking business of Genser Trucking Co., Inc. continued at all times to be carried on by the same individuals. The vehicles in question had been registered under the name of Genser Trucking Co., Inc. No change in registration was ever made, apparently because the names of the corporations involved herein were themselves changed. The Genser Trucking Co., Inc. issued checks imprinted with its name and underneath its name in smaller print appeared the name "Genser Transportation Corp".

8. The applicants have tendered no evidence to indicate that the June, 1972 transaction was a mere loan on security of the vehicles. No assertion of any repayment or retransfer of the vehicles has been advanced.

9. On January 7, 1974, an agreement was entered into between Genser Trucking Co., Inc. (then known as Genser Industries, Inc.) by its president, Leonard Genser, and Genser Transportation Corp. (then known as Genser Trucking Co., Inc.) by its executive vice president, Milton Held, and to which Leonard Genser and Sally Genser were also partners. This agreement purports to replace the agreement of June 2, 1972, as of that date. This agreement provides that Leonard Genser

and Sally Genser shall sell their stock in the Trucking Company to the Transportation Company for the sum of \$1,000.00. Claims approximating \$90,000.00 against the Trucking Company would be satisfied out of a security bond of \$25,000.00 on file with the State Insurance Department and by Leonard Genser and Sally Genser personally.

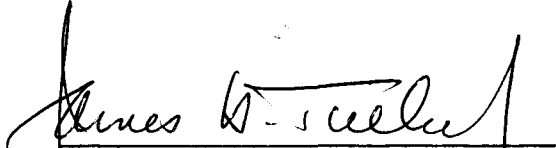
CONCLUSIONS OF LAW


A. That there can be no doubt that there was a sale of personal property between the two applicants, that a sales tax is due thereon, and that the events subsequent to the sale have no effect on the imposition of the tax.

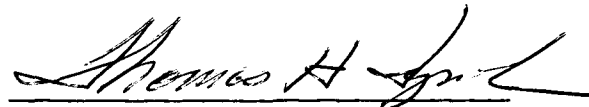
B. That the determinations under review are correct and the amounts thereof are due together with such interest as shall be computed under the Tax Law.

DATED: Albany, New York
September 28, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER