

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
GASLIGHT RIDES, INC.	:	DETERMINATION
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	:	
March 1, 1968 to August 31, 1973.	:	

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Applicant, Gaslight Rides Inc., Box 511, Lake George, New York, filed an application 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 March 1, 1968 to August 31, 1973. (File No. 00591).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Bldg. 9, State Campus, Albany, New York on May 12, 1976 at 9:45 A.M. Applicant appeared by Francis T. Roach, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq. of counsel).

ISSUES

I. Whether certain rides installed in an amusement park were subject to New York State sales and use taxes.

II. Whether the assessment was timely made.

FINDINGS OF FACT

1. On September 6, 1974, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Gaslight Rides, Inc. in the amount of \$17,582.97, plus penalty and interest of \$8,444.77 for a total of \$26,027.74. On September 10, 1975, the Sales Tax Bureau issued a Notice of Assessment Review to reflect certain adjustments, so that the adjusted tax due was \$9,357.67, the adjusted penalty and interest was \$4,492.39, and with \$4,217.60 paid on assessment, the adjusted balance due was \$9,632.46.

2. Applicant, Gaslight Rides, Inc., is part of an amusement park complex in Lake George, New York which contains various attractions, displays and rides. The rides in question were ordered, paid for and operated by Gaslight Rides, Inc. whose president and majority stockholder was Charles R. Wood.

3. On October 28, 1969 and November 17, 1970, applicant, Gaslight Rides Inc., contracted with the Frank Hrubetz & Co., Inc. of Salem, Oregon, for two complete rides known as "Round Up Ride" and "Paratrooper Ride", for \$34,000.00 and \$33,000.00 respectively. Installation was to be supervised by the seller. The situs, including the foundation and footings, were prepared by the applicant. Upon their completion, the rides were then placed on the assessment and tax rolls of the Town of Lake George and realty tax was paid thereon. Labor for installation was provided by the applicant.

4. Applicant, Gaslight Rides, Inc., has never filed any New York State sales and use tax returns.

5. Applicant, Gaslight Rides, Inc., cooperated with the Sales Tax Bureau and upon advise of their accountant, did not file returns.

CONCLUSIONS OF LAW

A. That the purchase of the two rides, "Round up Ride" and "Paratrooper Ride" by the applicant, Gaslight Rides, Inc. and the installation by said applicant did not constitute an addition or capital improvement to real property according to the meaning and intent of section 1105(c)(3) of the Tax Law. Therefore, the purchase of the rides was subject to New York sales tax.

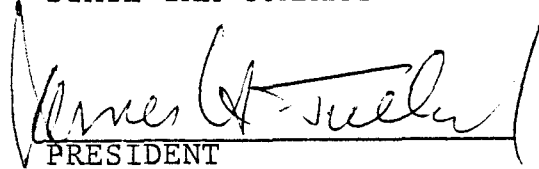
B. That where no return is filed, the tax may be assessed at any time according to the meaning and intent of section 1133(b) of the Tax Law. Therefore, the assessment made against Gaslight Rides, Inc. is timely.

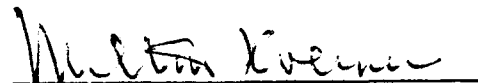
C. That the application of Gaslight Rides, Inc., is granted to the extent that the penalty and interest above minimum is waived; that the Sales Tax Bureau is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 6, 1974 and adjusted

September 10, 1975; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York  
February 28, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER