

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Pioneer Coaches, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 9/1/72-8/31/75. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1979, he served the within notice of Determination by mail upon Pioneer Coaches, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

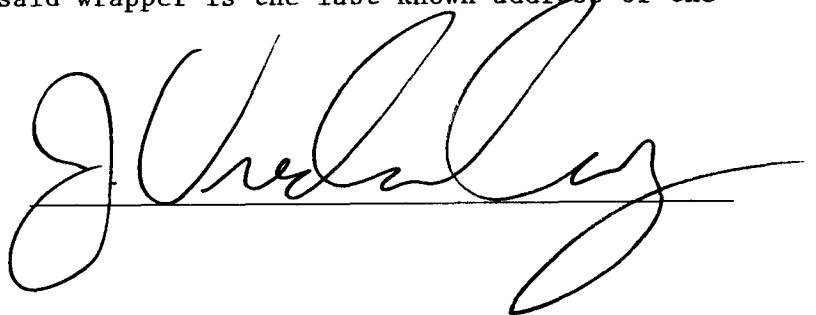
Pioneer Coaches, Inc.
6093 Strickland Ave.
Brooklyn, NY 11234

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of November, 1979.

Joanne Knapp

A large, stylized handwritten signature, likely of Jay Vredenburg, is written over a horizontal line.

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of :
Pioneer Coaches, Inc. :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1979, he served the within notice of Determination by mail upon Samuel B. Zinder the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Samuel B. Zinder
The Atrium, 98 Cutter Mill Rd.
Great Neck, NY 11021

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Pioneer Coaches, Inc.
6093 Strickland Ave.
Brooklyn, NY 11234

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Samuel B. Zinder
The Atrium, 98 Cutter Mill Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
PIONEER COACHES, 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 September 1, 1972 through	:	
August 31, 1975.	:	

Applicant, Pioneer Coaches, Inc., 6093 Strickland Avenue, Brooklyn, New York 11234, 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 September 1, 1972 through August 31, 1975 (File No. 15540).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 8, 1979, at 10:45 A.M. Applicant appeared by Samuel B. Zinder, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the applicant is liable for the collection of sales tax on the sale of its motor coaches.

FINDINGS OF FACT

1. Applicant, Pioneer Coaches, Inc. is engaged in leasing of buses and was registered with the Sales Tax Bureau.

2. On June 30, 1976, 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, Pioneer Coaches, Inc., imposing additional taxes due of \$6,507.55, plus penalty and interest of \$2,797.24, for a total due of

\$9,304.79 for the period September 1, 1972 through August 31, 1975.

3. The Sales Tax Bureau obtained a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes for the period September 1, 1972 through August 31, 1975 to December 20, 1976.

4. On audit, the Sales Tax Bureau's auditor determined that applicant sold eight buses for \$80,000.00 and failed to collect sales taxes in the sum of \$6,300.00. The auditor also determined that tax of \$207.55 was due on expense items; however, this was conceded by the applicant and is not at issue.

5. During the period in issue, the applicant sold seven buses to Inter-County Motor Coach, Inc. and one bus to Babylon Transit, Inc. Both companies are located at 243 Deer Park Avenue, Babylon, New York. The purchasers took delivery of the buses at the applicant's place of business. The applicant did not obtain resale certificates for the aforesaid transactions.

6. Applicant received letters from Inter-County Motor Coach, Inc. and Babylon Transit, Inc. stating that "...we sold all subject buses shortly after purchase out of state, as we found we could not make them fit our requirements, and therefore we could not use them."

7. Applicant argued that it was the policy of bus companies to pay the sales tax at the time its vehicles are registered. It contended that in this particular instance, the vehicles were not registered or used in New York State after the sale; therefore, no tax should be due.

CONCLUSIONS OF LAW

A. That the sale of buses by the applicant, Pioneer Coaches, Inc., constituted retail sales within the meaning and intent of section 1101(b)(4) of the Tax Law and that such retail sales are subject to the imposition of sales tax under section 1105(a) of the Tax Law. Moreover, section 1132(c) of the Tax Law provides, in part, that all receipts for property of any type

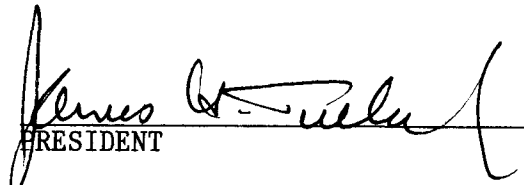
mentioned in 1105(a) are subject to tax until the contrary is established.
The burden of proving that any receipt is not taxable is on the person required to collect the tax.

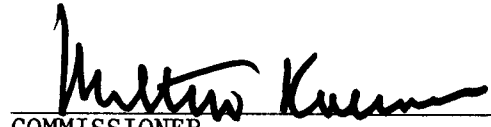
B. That the application of Pioneer Coaches, Inc. is denied.

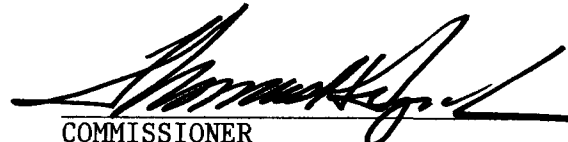
DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER