

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Buddy's Transportation Co., Inc. :  
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 6/1/71-2/28/75. :

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 28th day of November, 1980, he served the within notice of Determination by mail upon Buddy's Transportation Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Buddy's Transportation Co., Inc.  
3 Railroad Pl.  
Maspeth, NY 11378

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  
28th day of November, 1980.

*Deborah A Bank*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Buddy's Transportation Co., Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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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 28th day of November, 1980, he served the within notice of Determination by mail upon Gerald N. Tischfeld 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. Gerald N. Tischfeld  
11 Grace Ave.  
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  
28th day of November, 1980.

*Deborah A. Bank*

*J. Vredenburg*

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

November 28, 1980

Buddy's Transportation Co., Inc.  
3 Railroad Pl.  
Maspeth, NY 11378

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  
Gerald N. Tischfeld  
11 Grace Ave.  
Great Neck, NY 11021  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
BUDDY'S TRANSPORTATION CO., 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 June 1, 1971	:	
through February 28, 1975.	:	

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Applicant, Buddy's Transportation Co., Inc., 3 Railroad Place, Maspeth, New York 11378, 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 June 1, 1971 through February 28, 1975 (File No. 11184).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 9, 1978 at 9:15 A.M. Applicant appeared by Gerald N. Tischfeld, CPA. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the audit conducted by the Sales Tax Bureau of applicants available books and records was proper and correct.

II. Whether the funds transferred to applicant Buddy's Transportation Co., Inc. from Brookfield Bus Service, Inc. are subject to the sales tax as rentals or leases.

FINDINGS OF FACT

1. Applicant, Buddy's Transportation Co., Inc., was engaged in the business of operating a school bus route for and subsequently leasing buses to the New York

City Board of Education and operating a charter bus service for New York City Port Authority transporting passengers at John F. Kennedy International Airport to various terminals.

2. On June 10, 1975, as a result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period June 1, 1971 through February 28, 1975 against the applicant in the amount of \$18,976.27, plus penalty and interest of \$6,026.16. Because of the unavailability of certain books and records, the Sales Tax Bureau computed the additional taxes due as follows:

(a) For the period June 1, 1971 through May 31, 1972, and the periods ended November 30, 1972 and February 28, 1973, additional taxable sales were assessed at one-third of the gross sales reported on applicants' sales tax returns for these periods. The taxable sales for these periods totalled \$221,611.00.

(b) Taxable sales reported for the periods ended August 31, 1972; May 31, 1973; August 31, 1973; November 30, 1973; and February 28, 1974 were doubled. The taxable sales for these periods totalled \$49,800.00.

(c) No taxable sales were reported by the applicant for the remaining four quarters of the audit; therefore, taxable sales were assessed at the same amounts as the last four periods. The taxable sales for these periods totalled \$36,000.00.

(d) The total net taxable sales for the period in issue was \$307,411.00.

3. Applicant had a contract with the New York City Board of Education for the leasing of buses. As a result of a bus driver's strike in the latter part of 1970, the applicant was unable to fulfill its contractual obligations with the Board of Education. In October of 1970, the applicant renegotiated its contract with the Board of Education which provided for the leasing of approximately 90 buses. This obligation ceased on June 30, 1971.

Due to financial difficulties and the effects of the aforementioned strike, the applicant was also unable to carry out its agreement with the Port Authority. An affiliated corporation, Brookfield Bus Service, Inc. (whose sole shareholders were Joseph and Lillian Blasi, who were also the sole shareholders of applicant) assumed responsibility for the contract with the Port Authority as of October, 1970, and used the applicants' buses to do so. Brookfield Bus Service, Inc. transferred funds, in the amount of \$366,766.00, to applicant, Buddy's Transportation Co., Inc., to cover payments of notes and interest due on this equipment and other expenses.

4. Applicant contended that the audit was not thoroughly performed and disputed the Sales Tax Bureau's claim of insufficient records by introducing journals, ledgers and bank statements into evidence. However, these records were inconclusive and failed to show that the audit was incorrect. It was also contended that operations were ceased and the corporation became non-existent as of the latter part of 1973; however, it offered no substantial evidence to show that business was discontinued or that any of its assets were sold.

5. It was also the applicant's contention that none of its receipts in the audit period were taxable since monies received from the Board of Education were from a tax exempt organization and the monies received from Brookfield Bus Service, Inc. were tax exempt transfers to cover operating costs with no

profit motive intended. However, applicant reported sales tax for the period June 1, 1971 through February 28, 1974, in the aggregate of \$2,782.50 which applicant contended was for sales tax owed on the purchase of a vehicle. Taxable sales reported on these returns did not include receipts from Brookfield Bus Service.

CONCLUSIONS OF LAW

A. That the funds transferred by Brookfield Bus Service, Inc. to applicant, Buddy's Transportation Co., Inc. constituted payments for the renting or leasing of applicant's buses within the meaning and intent of Section 1101(b)(5) of the Tax Law; that such payments are taxable under Section 1105 of the Tax Law.

B. That the correct basis for taxable sales is the amount of funds transferred from Brookfield Bus Service, Inc. to applicant; that the gross sales reported on the applicant's sales tax returns as the basis of liability is incorrect, therefore the original basis for the assessment is improper. However, since the tax due on the transfer of funds would produce a greater tax such deficiency can not be increased in accordance with the meaning and intent of section 1147(b) of the Tax Law. Accordingly, the amount of tax due is sustained and only the basis for the tax liability is corrected in accordance with section 1138 of the Tax Law.

C. That the application of Buddy's Transportation Co., Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 10, 1975, is sustained.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION

*James H. Tuck*  
PRESIDENT

*Thomas H. [unclear]*  
COMMISSIONER

*Francis R. Koenig*  
COMMISSIONER