

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Circle Line-Sightseeing Yachts, 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 6/1/74 - 5/31/77. :

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 18th day of July, 1980, he served the within notice of Determination by mail upon Circle Line-Sightseeing Yachts, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

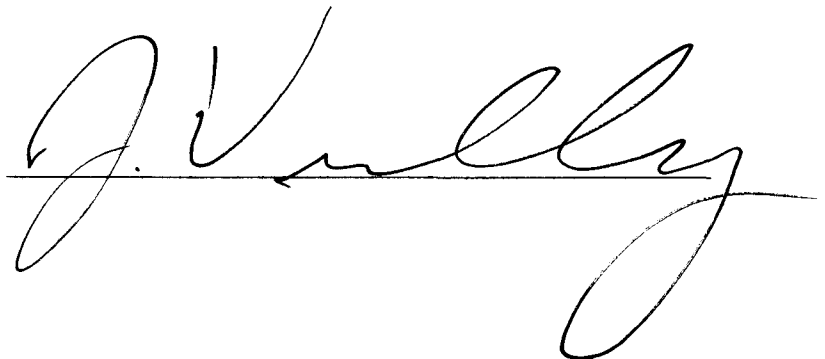
Circle Line-Sightseeing Yachts, Inc.
Pier 83
West 43rd St.
New York, NY 10036

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
18th day of July, 1980.

Robert A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Circle Line-Sightseeing Yachts, 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 6/1/74 - 5/31/77. :

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 18th day of July, 1980, he served the within notice of Determination by mail upon Dennis C. McMahon and Martin McHugh the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

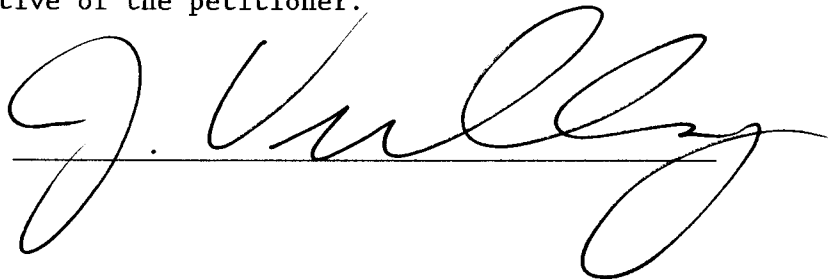
Mr. Dennis C. McMahon and Martin McHugh
McHugh, Heckman, Smith & Leonard
80 Pine St.
New York, NY 10005

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
18th day of July, 1980.

Dorothy A. Bank



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

July 18, 1980

Circle Line-Sightseeing Yachts, Inc.
Pier 83
West 43rd St.
New York, NY 10036

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
Dennis C. McMahon and Martin McHugh
McHugh, Heckman, Smith & Leonard
80 Pine St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
CIRCLE LINE - SIGHTSEEING YACHTS, 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, 1973 :
through May 31, 1977. :

Applicant, Circle Line - Sightseeing Yachts, Inc., Pier 83, West 43rd Street, New York, New York 10036, 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, 1973 through May 31, 1977 (File No. 24175).

A formal hearing was held before David L. Evans, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 18, 1979 at 11:00 A.M. Applicant appeared by McHugh, Heckman, Smith & Leonard (Martin McHugh and Dennis C. McMahon, Esqs., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether applicant's vessels are primarily engaged in interstate or foreign commerce.

FINDINGS OF FACT

1. On October 14, 1976, applicant, Circle Line - Sightseeing Yachts, Inc., consented to extend the period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law for the taxable periods September 1, 1973 through August 31, 1976 to December 19, 1977.

2. On September 19, 1977, the Audit Division issued to Circle Line - Sightseeing Yachts, Inc. a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period September 1, 1973 through May 31, 1977 in the amount of \$22,316.24, plus penalty and interest of \$9,647.12, for a total of \$31,963.36.

3. On October 23, 1978, on the recommendation of the Metro Audit Group, the aforementioned assessment was reviewed. The result was a reduction of the tax due to \$20,692.24, plus penalty and interest of \$12,605.26, for a total of \$33,297.50.

4. During the periods at issue, applicant, Circle Line - Sightseeing Yachts, Inc., operated eight vessels in and around the waters of Manhattan and New York harbor. Applicant primarily used its vessels to conduct tours around Manhattan Island. These tours usually began at Pier 83 located at West 43rd Street, New York, New York. The vessels crossed the Hudson to travel as much as possible in New Jersey waters. The primary purpose of heading to and proceeding as much as possible in New Jersey waters was to attempt to avoid New York and New York City taxes. The vessels then proceeded to pass by Ellis Island, Liberty Island and Governor's Island before heading up the East River. After they passed through the East River, they passed through the Harlem River Ship Canal, then down the Hudson back to Pier 83.

5. In addition to the tours around Manhattan, applicant chartered out its vessels for moonlight cruises and cruises in waters outside of New York. Applicant offered no evidence to show that these custom charters were more than incidental trips relative to applicant's primary business described in Finding of Fact "4".

6. Applicant has not paid sales or use tax on fuel applicant used in its vessels. The tax asserted due is based on applicant's fuel purchases,

less an allowance for those cruises found in Finding of Fact "5" where the cruise both originated and terminated outside of New York.

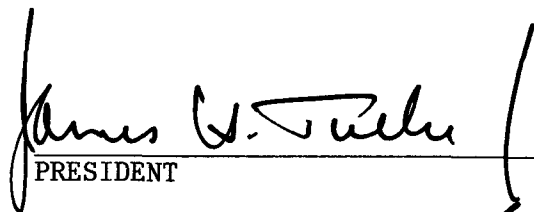
CONCLUSIONS OF LAW

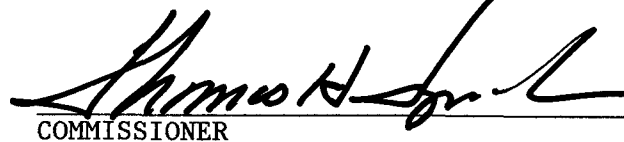
A. That the vessels of applicant are not primarily engaged in interstate or foreign commerce within the meaning of section 1115(a)(8) of the Tax Law. Applicant failed to prove that its vessels made more than incidental trips outside of New York waters as compared to applicant's primary business of conducting boat tours of Manhattan and other New York islands. Therefore, applicant's fuel purchases are subject to New York State and local sales and use taxes.

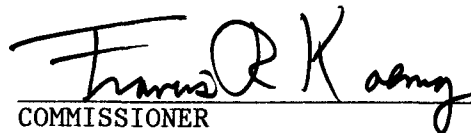
B. That the application of Circle Line - Sightseeing Yachts, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 19, 1977, as amended, is sustained.

DATED: Albany, New York
JUL 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER