

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Circle Line-Statue of Liberty Ferry, 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 6/1/74 - 5/31/77. :

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-Statue of Liberty Ferry, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Circle Line-Statue of Liberty Ferry, 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.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Circle Line-Statue of Liberty Ferry, 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.

Robert A. Bank

J. Vredenburg

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

July 18, 1980

Circle Line-Statue of Liberty Ferry, 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

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In the Matter of the Application	:	
	:	
of	:	
CIRCLE LINE - STATUE OF LIBERTY FERRY, 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, 1974 through May 31, 1977.	:	

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Applicant, Circle Line - Statue of Liberty Ferry, 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 June 1, 1974 through May 31, 1977 (File No. 24173).

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 September 19, 1977, the Audit Division issued to Circle Line - Statue of Liberty Ferry, Inc. a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period June 1, 1974 through May 31, 1977 in the amount of \$56,768.23, plus penalty and interest of \$7,721.04, for a total of \$64,489.27.

2. On October 23, 1978, on the recommendation of the Metro Audit Group, the aforementioned notice was reviewed. The result was a reduction of the tax due to \$53,636.82, plus penalty and interest of \$20,950.12, for a total of \$74,586.94.

3. Applicant, Circle Line - Statue of Liberty Ferry, Inc., purchased the vessel Miss Freedom without paying sales or use tax. Miss Freedom is used to provide ferry service from Battery Park, New York to Liberty Island and back. Applicant also offered ferry service on the Miss Freedom from Liberty State Park, Jersey City, New Jersey to Ellis Island and back. Applicant offered insufficient evidence as to the relative frequency of the trips, although applicant indicated it kept detailed records of such trips.

4. Applicant also operates two other vessels; the Miss Circle Line and the Miss Liberty. Both vessels are used to transport persons from Battery Park, New York to Liberty Island and back. Applicant has not paid sales or use tax on the fuel used by these vessels.

5. In 1833, New York and New Jersey entered into an agreement approved by Congress that the New York - New Jersey boundary will be the middle of the Hudson River and the Bay of New York. However, the agreement provided that Ellis Island and Liberty Island would remain part of New York located within the geographic boundaries of the City of New York even though the surrounding waters are in New Jersey.

#### CONCLUSIONS OF LAW

A. That applicant failed to prove that the vessel Miss Freedom was primarily engaged in interstate or foreign commerce within the meaning of section 1115(a)(8) of the Tax Law. Therefore, applicant's purchase and also its fuel purchases are subject to New York State and local sales and use taxes.

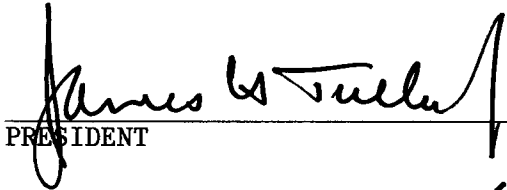
B. That the vessels, Miss Circle Line and Miss Liberty, are not primarily engaged in interstate or foreign commerce as the prearranged journeys of both vessels begin and end in New York with the only stop at a point in New York. The mere crossing of state lines does not constitute the primary engagement in interstate commerce required by section 1115(a)(8) of the Tax Law. Accordingly, the fuel purchased for use by these vessels is subject to New York State and local sales and use taxes.

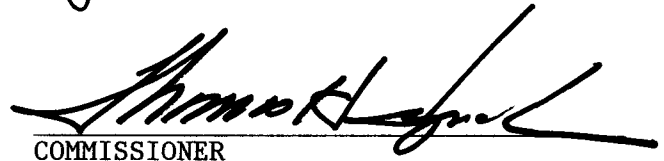
C. That the application of Circle Line - Statue of Liberty Ferry, Inc., is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated September 19, 1977, as amended, is sustained.

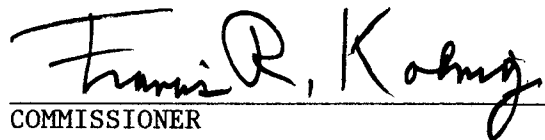
DATED: Albany, New York

JUL 1 8 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER