

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Pioneer Warehouse Corp. :
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 3/1/73 - 2/29/76. :

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Pioneer Warehouse Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Pioneer Warehouse Corp.
41 Flatbush Ave.
Brooklyn, NY 11217
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
22nd day of February, 1980.

Jeanne Knapp

J. Vredenburg

2. Applicant, the owner of a warehouse located close to New York City's financial district, rented rooms on an individual-room basis to attorneys, accountants, banks and brokerage houses. The tenants had the sole and exclusive right to occupy the rooms. Files stored in said rooms were referred to frequently. The rent was reported on the quarterly and annual commercial rent tax returns. The warehouse was open from 8:00 A.M. to 5:00 P.M. When a renter arrived, he was required to sign in and note the time. Applicant had no knowledge of the basic inventory of the rooms. Applicant provided a trucking service within the warehouse, on an exclusive basis.

3. On or about August 6, 1976, an audit was performed on applicant which determined that applicant's charges for storage of records was subject to tax. It was also determined that so-called "burning sales" actually represented a service in which records were carted away to an incinerator in a process similar to rubbish removal and were subject to tax. A test of applicant's records for January and February, 1976, revealed additional burning sales of 34.3 percent due to amounts billed as trucking and labor. (The trucking of a customer's records and the labor performed within a customer's room were otherwise considered non-taxable by the auditor.) This factor (34.3 percent) was applied to the entire period at issue.

4. At present, applicant charges sales tax for the removal of records which are to be incinerated. Its memorandum of procedures so states, and recent invoices confirm this.

5. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1105(c)(4) of the Tax Law provides that there is imposed a tax on the storing of all tangible personal property not held for sale in the regular course of business; therefore, applicant, Pioneer Warehouse Corp.,

is liable for the additional tax for the service that it provides to customers, in the storage of records during the periods in issue.

B. That section 1105(c)(5) of the Tax Law distinguishes the removal of trash from the exception to particular services that are exempt from the imposition of a sales tax; therefore, applicant's removal of records to the incinerator is subject to sales tax for the periods in issue.

C. That the penalties and interest in excess of the minimum statutory rate are cancelled.

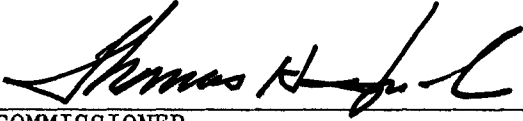
D. That the application of Pioneer Warehouse Corp. is granted to the extent that interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law are waived; that the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 17, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 22 1980


PRESIDENT


COMMISSIONER

COMMISSIONER