

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Walters Transit 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 6/1/73-5/31/76. :

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 23rd day of May, 1980, he served the within notice of Determination by mail upon Walters Transit Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walters Transit Corp.
254 West 54th St.
New York, NY 10019

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Walters Transit Corp. :
for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
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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 23rd day of May, 1980, he served the within notice of Determination by mail upon Samuel D. 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 D. Zinder
98 Cutter Mill Road
Great Neck, NY 11024

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
23rd day of May, 1980.

Joanne Krapp

J. Vredenburg

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

May 23, 1980

Walters Transit Corp.
254 West 54th St.
New York, NY 10019

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 D. Zinder
98 Cutter Mill Road
Great Neck, NY 11024
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
WALTERS TRANSIT CORP. : 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, 1973 through May 31, :
1976. :

Applicant, Walters Transit Corp., 254 West 54th Street, New York, New York 10019, 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, 1973 through May 31, 1976 (File No. 17240).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 14, 1978 at 10:45 A.M. Applicant appeared by Samuel D. Zinder, Esq. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether repairs to Walters Transit Corp. omnibuses by mechanics on Greyhound Lines East's payroll were subject to New York sales and use taxes for the period under audit.

II. Whether the amount of the sales tax deficiency was properly determined.

FINDINGS OF FACT

1. On October 1, 1976, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Walters Transit Corp. (hereinafter "Walters") for the

period June 1, 1973 through May 31, 1976 in the amount of \$20,567.30 in taxes, plus penalty and interest of \$10,377.88, for a total of \$30,945.18 detailed as follows:

<u>Period Ended</u>	<u>Tax</u>	<u>Penalty and Interest</u>	<u>Total</u>
8/31/73	\$ 8,420.91	\$ 3,452.57	\$11,873.48
11/30/73	7,167.77	4,228.98	11,396.75
2/28/74	4,554.24	2,550.37	7,104.61
5/31/74	25.38	13.45	38.83
8/31/74	40.71	20.36	61.07
11/30/74	37.70	17.72	55.42
2/28/75	18.27	7.67	25.94
5/31/75	129.80	46.73	176.53
8/31/75	63.17	18.95	82.12
11/30/75	55.28	13.27	68.55
2/29/76	22.05	3.97	26.02
5/31/76	32.02	3.84	35.86
TOTAL	<u>\$20,567.30</u>	<u>\$10,377.88</u>	<u>\$30,945.18</u>

2. On July 19, 1976 the applicant executed a consent extending the period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law to and including June 19, 1977.

3. Applicant Walters is a bus company primarily engaged in local transit and charter operations. Sometime prior to 1973, the entire stock of Walters was acquired by Greyhound Lines East. Walters became and still is a wholly-owned subsidiary of Greyhound Lines East. Walters maintains a complete and separate set of books.

4. In approximately January, 1970, Walters closed its maintenance and repair facility in the Astoria-Long Island City area in Queens, where it had a repair and parking garage. All Walters' mechanics were moved to the Greyhound Lines East maintenance and parking facility at 525 11th Avenue, New York City. Buses were physically moved; mechanics were placed on the Greyhound Lines East payroll; and thereafter all repairs to Walters' buses were made by Greyhound Lines East.

5. All tires, parts and materials used by Greyhound Lines East on repairs and maintenance of Walters' buses were charged by Greyhound Lines East to Walters by invoices, with mechanics' labor hours charged at union rates. Prior to March 1, 1974, these invoices included sales tax paid by Greyhound on material purchases.

6. The Audit Division auditor examined all expense invoices for the period June 1, 1973 through December 31, 1973. He also examined all the expense vouchers for the calendar year 1975. He analyzed all expenses on which sales tax had not been paid in the seven-month period in 1973 and the entire year of 1975. He computed an error rate for the separate and combined periods.

7. Chapter 836 of the laws of 1974 amended section 1119(b) of the Tax Law to provide credits against sales tax for bus operators who provided local service in stated percentages, affecting sales made on or after March 1, 1974. Where the percent of local service was seventy or greater, the credit was to be 100 percent of sales and use tax on omnibus expenses. The auditor checked and verified mileage tax returns made by the applicant to New York State with reference to Walters' books. He found that mileage in local transit service for the years 1973, 1974 and 1975 constituted more than 70 percent of total mileage. He determined that a credit of 100 percent of sales tax was applicable to all purchases of Walters after March 1, 1974. Nevertheless, he computed the sales tax deficiency on omnibus expenses for the period June 1, 1973 through February 28, 1974 by applying the combined test error rate based on seven months in 1973 and the year of 1975 to total sales from June 1, 1973 through February 28, 1974.

Other expense purchases were computed at an error rate of .00078 or .078 percent, as follows:

<u>Quarter Ended</u>	<u>Expense Purchases Tax Unpaid</u>	<u>Non-Recurring Purchases Tax Unpaid</u>
8/31/73	\$ 521.06	\$
11/30/73	443.52	
2/28/74	281.80	
5/31/74	362.54	
8/31/74	530.95	
11/30/74	471.25	
2/28/75	228.39	
5/31/75	362.48	1,260.00
8/31/75	569.68	220.00
11/30/75	445.96	245.00
2/29/76	275.58	
5/31/76	400.22	
TOTAL	\$4,893.43	\$1,725.00

8. Sales tax returns had been timely made for each of the quarters covered in the audit period from June 1, 1973 through May 31, 1976. The auditor found the sales records to be accurate. The auditor's worksheets (copies of which were furnished to the applicant) show reported sales as follows:

<u>Quarter Ended</u>	<u>Sales</u>
August 31, 1973	\$ 668,029.00
November 30, 1973	568,618.00
December 31, 1973	87,629.00
TOTAL	\$1,324,276.00

Actual omnibus expenses on which no sales tax had been paid from June 1, 1973 through December 31, 1973 were recorded by the auditor as \$383.30. On sales of \$1,324,276.00, this was computed to yield an error rate of .00029 or .029 percent. Applying this error rate to total sales of \$1,597,934.00 for the period June 1, 1973 through February 28, 1974 yields \$384.04 on which 7 percent sales tax was unpaid.

9. Applicant did not deny that Walters had failed to pay sales tax on some expenses, but did contest the imposition of sales tax on bus repairs made by Greyhound Lines East on Walters' omnibuses. Walters contended that there

had been no sale of services by Greyhound Lines East, but that the bus repairs were made by the parent corporation as an intercompany convenience.

10. Applicant relied in good faith on the interpretation of its counsel that its purchases were not subject to sales tax in the period under review.

CONCLUSIONS OF LAW

A. That the billed charges by Greyhound Lines East to applicant Walters Transit Corp. for repairs and maintenance of Walters' omnibuses constitute receipts from the sale of repairs to tangible personal property not held for sale in the regular course of business, within the meaning and intent of section 1105(c)(3) of the Tax Law, and were thus subject to sales tax.

B. That since the applicant failed to pay sales tax to Greyhound Lines East, the unpaid tax is payable directly to the Tax Commission pursuant to section 1133(b) of the Tax Law.

C. That the Audit Division improperly included 1975 in its test period to determine an error rate for unpaid sales tax for periods in which the sales tax was not applicable to the applicant. The auditor had available detailed records of sales, purchases of omnibus supplies, purchases of expenses, and could have obtained accurate amounts of the purchases upon which no sales tax had been paid. The auditor worked out error rates for seven months of 1973. This rate should be used and applied to the two months in 1974 prior to March 1, 1974.

D. That the application of Walters Transit Corp. is granted to the extent that the Audit Division is directed to modify the deficiency dated October 1, 1976 by recomputing the deficiency in accordance with Finding of Fact "8".

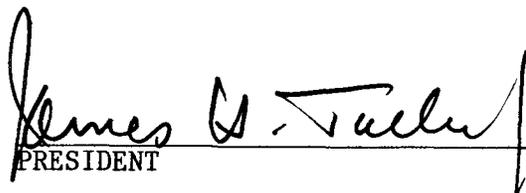
That the application is granted to the extent that interest in excess of the minimum interest as well as the penalty imposed pursuant to section 1145(a) of the Tax Law, are waived.

E. That except as so granted, the application of Walters Transit Corp. is in all respects denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 1, 1976 is sustained.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER