

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Grand Island Transit Corporation : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 8/1/65-8/31/71. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Grand Island Transit Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Grand Island Transit Corporation
c/o R. Thomas Weeks, Pres.
5355 Junction Rd.
Lockport, NY 14094

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
31st day of January, 1984.

David Parchuck

William A. Haggard
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

State of New York }
County of Albany } ss.:

James Locke
Phillips, Lytle, Hitchcock, Blaine
3400 Marine Midland Center
Buffalo, NY 14203

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.

David Barbour

Wesley P. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 31, 1984

Grand Island Transit Corporation
c/o R. Thomas Weeks, Pres.
5355 Junction Rd.
Lockport, NY 14094

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James Locke
Phillips, Lytle, Hitchcock, Blaine
3400 Marine Midland Center
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GRAND ISLAND TRANSIT CORPORATION
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 August 1,
1965 through August 31, 1971.

DECISION

Petitioner, Grand Island Transit Corporation, 5355 Junction Road, Lockport, New York 14094, filed a petition 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 August 1, 1965 through August 31, 1971 (File No. 11117).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on September 21, 1981, at 2:45 P.M. Petitioner appeared by James Locke, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether inter company bus charters constitute the rental or lease of tangible personal property and are thereby subject to sales and use taxes.

FINDINGS OF FACT

1. Petitioner, Grand Island Transit Corporation (GI), is a New York transportation corporation engaged in the tour and charter bus business in the Western New York area.

2. On September 19, 1972, 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 petitioner covering the period August 1, 1965 through August 31,

1971 for taxes due of \$71,849.68, plus penalty and interest of \$31,520.40, for a total of \$103,370.08.

3. On May 21, 1974, the Audit Division issued a Notice of Assessment Review which revised the amount of tax due to \$8,417.22.

At the hearing, the Audit Division conceded that the tax should be further reduced to \$5,197.12.

4. GI's business activity consists of providing bus transportation and charter tours for various groups and organizations. GI provides a bus and driver for each tour which is to a pre-arranged destination for a pre-arranged fee. The fee is determined on the number of miles, size of the bus and tolls, subject to Interstate Commerce Commission regulations. The departure and return times, the route and any stops are also pre-arranged. Once the bus is en route, any deviations from the pre-arranged plans must be approved by GI.

On certain occasions, some of GI's competitors in the tour and charter bus business do not have sufficient equipment and drivers to satisfy the needs of their customers. To accommodate this demand, the competitors enter into a charter with GI for it to provide the desired transportation using GI's buses and drivers. These charters are identical in all respects to GI's normal charter business described above except that another bus company is the chartering customer. Likewise, on those occasions when GI has business in excess of its equipment capacity, it will enter into a charter with one of its competitors to provide the desired transportation on a similar basis.

The Audit Division determined that the foregoing transactions between GI and other bus companies constituted a rental or lease of the bus involved and thus was subject to tax.

5. GI's charter agreement with its customers, including other bus companies, provided that the vehicle is under the dominion and control of GI.

6. In inter-company charters, the bus company actually providing the transportation retains complete control over the operation of the bus. The chartering party's rights are limited to boarding the bus and riding to the agreed desination.

CONCLUSIONS OF LAW

A. That section 1101(b)(5) of the Tax Law defines "sale" as any transfer of title or possession or both... rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration...

20 NYCRR 526.7 provides in subsection (e)(3) "transfer of possession with respect to a rental, lease or license to use, means that one of the following attributes of property ownership has been transferred: (i) custody or possession of the tangible personal property, actual or constructive; (ii) the right to custody or possession of the tangible personal property; (iii) the right to use or control or direct the use of tangible personal property. Subsection (e)(5) provides that "when a lease of equipment includes the services of an operator, possession is deemed to be transferred where the lessee has the right to direct and control the use of the equipment.

B. That the inter company charter of buses does not result in the transfer of any of the attributes of possession set forth in 20 NYCRR 526.7(e)(3); that at all times the bus company actually providing the transportation retains actual and exclusive possession of the bus and controls the use thereof. No greater rights of possession are granted to another bus company than are granted to the normal chartering group and such rights do not reach the level

of actual or constructive possession of the bus. Therefore, the inter company bus charters do not constitute the rental or lease of tangible personal property within the meaning and intent of section 1101(b)(5) of the Tax Law. That said transactions are merely the subcontracting for transportation services.

C. That the petition of Grand Island Transit Corporation is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 19, 1972 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 31 1984

PRESIDENT

Frank R. Kaeng

COMMISSIONER

Mark J. ...

COMMISSIONER

I dissent.

Rodrick W. ...

P 470 315 406

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>James Lucke</i>	
Street and No. <i>1414 Rittenhouse Blvd</i>	
P.O. State and ZIP Code <i>3400 Marine Midway</i>	
Return Receipt Showing to whom and Date Delivered <i>Buffalo NY 14203</i>	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 470 315 405

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Grand Island Transit</i>	
Street and No. <i>914 H. Thomas Ave</i>	
P.O. State and ZIP Code <i>5355 Junction Rd.</i>	
Return Receipt Showing to whom and Date Delivered <i>Freeport N.Y. 14094</i>	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982