

STATE OF NEW YORK
STATE TAX COMMISSION

Pinder Amusement Co.
Art. 16-A - U.S.T.

In the Matter of the Petition

John D'Errico & Carmela Pinto ^{of} individually
and as co-partners d/b/u the firm name and
style of PINDER AMUSEMENT COMPANY :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1958 & 1959 :

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of April , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon John D'Errico &
Carmela Pinto (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John D'Errico & Carmela Pinto
d/b/u Pinder Amusement Company
3029 Stillwell Avenue
Brooklyn, New York
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

30th day of April , 1971.

Joyce S. Van Katten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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and as co-partners, d/b/u the firm name and
styles of PINDER AMUSEMENT COMPANY :

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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of April , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Julian I.

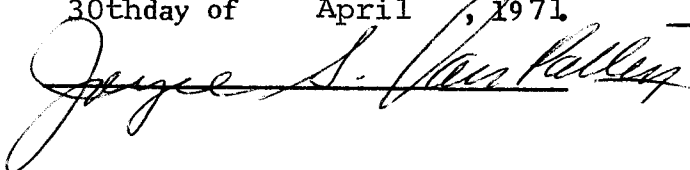
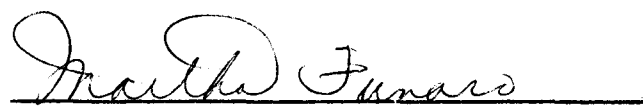
Berghoffen, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Julian I. Berghoffen, Esq.
280 Broadway
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

30th day of April , 1971.

STATE OF NEW YORK
STATE TAX COMMISSION

Applicants, John D'Errico and Carmela Pinto, individually and as co-partners d/b/u the firm name and style of Pinder Amusement Company, (hereinafter referred to as "Pinder Amusement Company") have filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1958 and 1959. (File Nos. B 832115 and B 846991). A formal hearing was held before Martin Schapiro, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 15, 1965 at 10:30 A.M. Applicants appeared by Julian I. Berghoffen, Esq.

1. Applicant, Pinder Amusement Company, filed New York State income tax and unincorporated business tax partnership returns for the years 1958 and 1959. On these returns they claimed that no portion of the net income of the partnership was subject to unincorporated business tax.

3. On April 5, 1961, the Income Tax Bureau issued a Notice of Additional Assessment imposing unincorporated business tax upon the net business income received by applicant, Pinder Amusement Company, during the year 1958 upon the same grounds as set forth in the Notice of Additional Assessment issued January 23, 1961.

4. During the years 1958 and 1959 applicant, Pinder Amusement Company, was the lessee of a parcel of real property approximately 450 feet long and 70 feet wide located at the boardwalk in Coney Island. The property was leased from Henderson Properties, Inc. under a ten year lease. The lessee was required to pay rent of approximately \$16,000.00 per annum plus real estate taxes, water charges and insurance. The improvements on the property consisted of twelve old wooden shacks known as "stands" along Stillwell Avenue, one stand on Henderson Walk and three rides known as "Tornado Ride", "Pirates Hideaway" and "Spook Ride." "Tornado Ride" was a roller coaster. "Spook Ride" and "Pirates Hideaway" were pretzel rides involving a set of cars passing through a darkened area and coming out of the same entrance that they went in. "Spook Ride" was located underneath "Tornado Ride." These rides were permanently affixed to the real property and were not dismantled at the end of the season. The stands were used for eating establishments and amusement devices and games. "Tornado Ride" and "Spook Ride", while two separate rides, consisted of one structure.

5. Petitioner, Pinder Amusement Company, did not operate any of the rides and amusements located on the premises during the years 1958 and 1959. The stands and rides were sublet to eleven different sub-tenants. The stands were rented bare to the sub-tenants. They were required to provide the equipment or fixtures necessary to carry on the game or eating facilities. The only exception was the lunch counter where a prior sublessee had defaulted on his lease and left some equipment. The rides were also leased to subtenants. The leases included the land, the permanent structure plus some of the equipment for the rides. All leases

were for a fixed rental except the leases for "Tornado Ride" and "Spook Ride" which were on a percentage basis. Petitioner, Pinder Amusement Company, was not required to make any repairs to the rides. It was not engaged in any other business other than the subleasing of the aforesaid space. On its tax returns, it did not take depreciation for any personal property.

CONCLUSIONS OF LAW

A. That the stands and the structures of the rides leased by applicant, Pinder Amusement Company, to various tenants during the years 1958 and 1959 constituted real property in accordance with the meaning and intent of section 102(12) (b) of the Real Property Tax Law.

B. That during the years 1958 and 1959, the dominant factor in the conduct of applicant, Pinder Amusement Company's, business was the subleasing of real property and the inclusion in the leasehold of some equipment for the rides was incidental thereto and therefore, its activities constituted the holding, leasing or managing of real property exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 386 of the Tax Law. People ex rel, Max J. Rubin, et al v Tax Commission of the State of New York. 9 A.D. 2d 47 (3rd Dept., 1959) affirmed 8 N.Y. 922.

C. That the application of John D'Errico and Carmela Pinto individually and as co-partners d/b/u the firm name and style of Pinder Amusement Company, is granted and the Notices of Additional Assessment dated January 23, 1961 and April 5, 1961 are cancelled.

DATED: Albany, New York
April 30, 1971

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Marley
COMMISSIONER

Milton Kanner
COMMISSIONER