STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
UTILITY LEASING CORPORATION, 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 December 1, 1982 through August 31, 1985.	:	

Petitioner, Utility Leasing Corporation, Inc., 1600 Dublin Road, Columbus, Ohio 43215, 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 December 1, 1982 through August 31, 1985 (File No. 804211).

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 65 Court Street, Buffalo, New York, on July 27, 1988 at 1:15 P.M., with all briefs to be submitted by November 3, 1988. Petitioner appeared by Marjorie H. Brant, Esq., and Hubert H. Roberts, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether certain interest payments made by lessees are not subject to sales tax because such payments were made pursuant to a lease agreement with petitioner, as lessor, which was intended as a security agreement.

II. Alternatively, whether such interest payments made by lessees are not subject to sales tax because such payments were not part of the receipts from a retail sale of tangible personal property, but were a charge for the use of money, an intangible. III. Whether the audit method used to assess tax on the sale of certain motor vehicles upon the expiration of their lease term was improper.

IV. If not, whether petitioner has met its burden to show that tax was paid directly by

purchasers with respect to certain of such sales and that tax was not due on other of such sales.

V. Whether the provisions of Tax Law § 1132(f) and a purported refusal by the Department of Motor Vehicles to provide petitioner with access to its records should result in the cancellation of that portion of the deficiency herein pertaining to petitioner's sale of motor vehicles upon the expiration of their lease term.

FINDINGS OF FACT

1. Petitioner, Utility Leasing Corporation, is a wholly-owned subsidiary of Equilease Corporation ("Equilease") and was formed in 1969 pursuant to an agreement between Equilease and Columbia Gas System Service Corporation (a wholly-owned subsidiary of The Columbia Gas System, Inc.) for the sole purpose of serving as lessor of vehicles and other equipment to subsidiaries of The Columbia Gas System, Inc. ("Columbia System"). The Columbia System consists of approximately twenty subsidiary corporations located in various states involved in the transmission and distribution of natural gas. The Columbia System subsidiaries relevant herein are Columbia Gas of New York, Inc. ("CNY") and Columbia Gas Transmission Corporation ("TCO"). CNY and TCO are both public utilities which distribute or transport natural gas throughout New York.

2. The agreement, pursuant to which Equilease agreed to form petitioner, directed each of the subsidiary corporations of the Columbia System, following the formation of petitioner, to enter into identical but separate lease agreements with petitioner. Both TCO and CNY, along with each of the other Columbia System subsidiaries, subsequently entered into lease agreements with petitioner pursuant to this direction.

3. Equilease also guaranteed in its agreement with Columbia Gas System Service Corporation that Equilease would cause petitioner not to engage in any business other than the performance of its obligations under certain notes evidencing petitioner's indebtedness to Chemical Bank New York Trust Company ("Chemical Bank") for the purchase of equipment to be leased to the Columbia System companies and its obligations under the leases.

4. Equilease also guaranteed that petitioner would pay all taxes levied on it which were not the responsibility of the lessee under any lease agreement between petitioner and any of the Columbia System subsidiaries.

5. The Equilease-Columbia Gas System Service Corporation agreement also provided that petitioner would assign its right, title and interest in any leases between it, as lessor, and any of the Columbia System subsidiaries, as lessees, to Chemical Bank "as security for the payment of indebtedness owed to said bank".

6. Immediately upon its execution of the leases with the Columbia System subsidiaries, petitioner made the above-referenced assignment to Chemical Bank.

7. The lease agreements between petitioner and the Columbia System subsidiaries were administered, pursuant to the agreement between Equilease and the Service Corporation, by employees of the Service Corporation. Said employees were authorized by petitioner to act on its behalf. Petitioner had no employees of its own. Its compensation for the services it provided to the Columbia System was limited to an annual fee of $12,000.00 paid to it by the Service Corporation on behalf of all the Columbia System subsidiaries. Petitioner received no other compensation for its services.

8. When a Columbia System subsidiary/lessee under a lease agreement with petitioner wished to obtain a piece of equipment to be covered under the lease agreement, an official of the Columbia System subsidiary first made a determination that such a "unit" is necessary and then determined the specific type of equipment required pursuant to Columbia System guidelines. A Columbia System representative then negotiated a price for the unit with a local dealer. Petitioner was in no way involved in such negotiations, but was required pursuant to the lease agreement, to purchase equipment pursuant to the lessee's specifications. The prices for these purchases included all modifications and accessories required to make the unit ready for use by the particular Columbia System subsidiary, including a paint job and Columbia System logos on

the equipment. Pursuant to the terms of the lease, all amounts paid to the local dealer were part of the "base price" of the leased equipment. Also included in this base price was any charge for delivery of the unit to the subsidiary.

9. Once an agreement was reached between the subsidiary and dealer as to purchase price, model and specifications, the subsidiary then transmited a lease order to petitioner. Upon receipt of the lease order, petitioner issued a check to the dealer in the amount of the purchase price. The funds used by petitioner to pay the dealer were borrowed from Chemical Bank pursuant to petitioner's agreement with Chemical Bank to finance its purchases of equipment to be leased under its lease agreements with the Columbia System.

10. Once the equipment was purchased by petitioner, the Columbia System subsidiary took delivery. The subsidiary took possession of the equipment for the term of the lease which, was established by agreement between lessor and lessee. In practice, the term of the lease was established by the lessee and was equal to the estimated economic life of the leased equipment.

11. The lease agreements covered all types of equipment used by the Columbia System subsidiaries. Vehicles were the most common type of equipment leased under the agreements.

12. Petitioner, as lessor under the lease agreements, had no responsibility for or control over the leased equipment. The lessee was solely responsible for the selection of leased equipment.

13. Petitioner was registered as the owner of all leased vehicles. The lessees were responsible for registration, insurance and maintenance of all leased vehicles. Petitioner assigned its interest in any insurance policies to the lessees and the lessees indemnified petitioner for any liability arising from the use of the vehicles.

14. Upon its issuance of the check to the dealer, petitioner also notified Chemical Bank through the draft mechanism of the additional indebtedness incurred as a result of its purchase. As noted previously, pursuant to the assignment between petitioner and Chemical Bank, petitioner assigned all of its interest in the leases to the bank as security for the indebtedness incurred by petitioner in the purchase of equipment used by the lessees under the lease agreements. Consequently, the lessees made their monthly payments under the lease agreements directly to Chemical Bank. Petitioner provided each of the Columbia System subsidiaries with which it had entered into a lease agreement with a monthly billing statement listing the current indebtedness of that lessee under the lease agreement. The current monthly liability of the lessee was listed on the statement as consisting of a principal amount and a lease service charge. The "principal amount" equaled the sum of the base prices of each leased unit held by the subsidiary corporation divided by the number of months in each lease term. The "lease service charge" was an interest charge, imposed at a rate determined by Chemical Bank, on the aggregate amount of all unpaid installments to be paid by the lessee under all of its outstanding leases with petitioner. The lease service charge was imposed by the bank in consideration of its financing of the purchase of the leased equipment.

15. Having received their monthly billings from petitioner, the Columbia System subsidiaries paid the "principal" and "lease service charge" directly to Chemical Bank.

16. CNY and TCO, the lessees located in New York, paid sales tax to petitioner on the principal portion of their monthly lease payments. Petitioner, a registered vendor for sales tax purposes, filed quarterly sales tax returns. Petitioner reported and remited sales tax paid to it by CNY and TCO on the principal portion of the lease payments. No sales tax was collected or paid on the "lease service charge" portion of the monthly payment.

17. Upon the expiration of the lease term, the lessee may, at its option, renew the lease on a month-to-month basis for as long as the lessee desires. The lease agreements provide that the rental of equipment during such an extended term shall be the fair monthly rental value of such equipment. In practice, lessees paid petitioner $1.00 per month rental for the extended lease term.

18. When the lessee elects to retire a unit, it may remove parts of the unit for use on a new

leased unit at no cost to the lessee.

19. Under a lease, when a lessee elects to retire a unit from service, it must surrender possession of the unit to the lessor. The lessor is then obligated to sell the unit for the best price obtainable within 30 days. In practice, petitioner designated a representative of the lessee corporation to act on its behalf in fulfilling its obligation to sell the retired units. The lessee thus sold the retired units and petitioner never took possession. Generally, CNY and TCO offered the retired units, usually vehicles, for sale to their employees. If the employees did not purchase the vehicles, then the vehicles were sold through a public auction house.

20. Under the lease, if a unit is sold for a price in excess of the remaining principal balance due or to become due on the unit, the lessor is required to pay the lessee such excess and the lessor must use the proceeds to pay the remaining principal amount owed on the unit. In practice, as noted previously, employees of the lessee were authorized by petitioner to sell the units on its behalf. The lessee therefore used the proceeds of the sale to pay off the remaining indebtedness. Under the lease and in practice, the lessee is entitled to keep any portion of the sale price of a retired vehicle in excess of the remaining principal balance due or to become due on the unit.

21. If a vehicle was sold for a price less than the remaining unpaid principal balance, the lessee was required to pay the bank the deficiency.

22. Both CNY and TCO frequently sold vehicles on petitioner's behalf during the period at issue. No sales tax was collected on such sales.

23. Upon the purchase of retired vehicles by TCO and CNY employees, such employees were advised to pay sales tax directly to the Commissioner of Motor Vehicles upon the registration of the vehicles. Petitioner believed that all purchasers of vehicles subject to sales tax would be required to pay such sales tax to the Commissioner of Motor Vehicles before any such vehicles could be registered in New York.

24. On audit, the Division of Taxation determined that the lease service charges paid, pursuant to the lease agreements, by CNY and TCO were properly subject to sales tax. The Division totaled the lease service charges paid by CNY during the period at issue, which amounted to $161,009.62, and determined that $11,022.75 in tax was due as a result thereof. TCO paid $171,473.22 in such charges during the period at issue. The Division thus determined that $11,854.14 was due as a result.

25.. CNY and TCO were Columbia System subsidiaries located in New York which entered into lease agreements with petitioner and used leased equipment in New York. Both CNY and TCO sold vehicles on petitioner's behalf upon the retirement of such vehicles from service during the period at issue as described above.

26. The Division also determined that petitioner had failed to collect sales tax on equipment sold on its behalf by both TCO and CNY following expiration of the lease term and that petitioner failed to show that sales tax had been paid directly by the purchasers of such equipment. The Division used sales records provided to it by Mr. Charles Arnold, an employee of the Columbia System authorized to act on petitioner's behalf, to determine individual sales made on petitioner's behalf by CNY. With respect to sales made on petitioner's behalf by TCO, the Division relied on a lump-sum total of such sales provided to the Division by Mr. Arnold. Total tax determined due as a result of sales by CNY was $6,474.95 and total tax due as a result of sales tax TCO was $6,938.68.

27. On September 11, 1986, as a result of the foregoing determinations, the Division issued to petitioner a Notice of Determination and Demand for Payment of Sales and Use Taxes Due which asserted $36,290.52 in tax due for the period December 1, 1982 through August 31, 1985, plus penalty and interest.

28. Petitioner introduced evidence at hearing regarding the sales made on its behalf by CNY. Such evidence established the following:

(a) With respect to the transfer of title to a vehicle from petitioner to Aetna Casualty

and Surety Company ("Aetna") on May 12, 1983, Aetna paid petitioner $6,470.82 pursuant to the terms of an insurance policy to reimburse petitioner for damages to petitioner's vehicle insured by Aetna. Following this payment, title to the vehicle was transferred to Aetna. The Division determined that this insurance payment was subject to sales tax. At the time of transfer to Aetna the vehicle in question was a wreck and had no value.

(b) Petitioner established that sales tax was paid directly to New York on vehicles sold to the following individuals on the following dates at the following prices:

Purchaser	Date of Sale	Sale Price
1) Carl Pitcher	11/2/83	$2,200.00
2) Rosalind Morlando	4/5/84	$2,711.00
3) Joseph Babcock	4/5/84	$2,755.00
4) John Grace	4/10/84	$3,001.50
5) Ronald Fonner	4/8/85	$2,400.00

(c) Petitioner established that the vehicles involved in the following sales were registered in states other than New York:

Purchaser	Date of Sale	Sale Price
1) William Bergman	12/15/82	$ 896.00
2) William Bergman	4/10/84	$1,579.00
3) William Bergman	1/17/85	$2,325.00
4) Stanley Albitz	2/27/85	$3,500.00

29. Petitioner also introduced evidence at hearing regarding sales made on its behalf by TCO. Such evidence established the following:

(a) Petitioner introduced affidavits and/or other documentation as evidence of sales totaling $88,204.50. Of this amount, $22,606.50 involved sales made by petitioner either before or after the audit period. This included a sale to the Village of Dundee in 1981. Petitioner also introduced evidence of three sales in 1985 totaling $6,000.00 but failed to show whether such sales took place during the audit period.

(b) Petitioner introduced no evidence as to whether sales tax was paid with respect to a vehicle sold to a Kirk Lamay in 1983 for $3,450.00.

(c) The sale of a vehicle in 1984 to Armand Roa for $2,400.00 was for purposes of resale.

(d) With respect to the balance of the sales for which evidence was introduced,

petitioner established that sales tax was paid by the purchasers directly to New York on the following sales made throughout the audit period totaling $53,748.00:

Purchaser	Date of Sale	Sale Price
Harold Houghton	1984	$ 2,300.00
John Lauser	1983	3,010.00
Robert Lewis	April 1985	4,325.00
Albert Lloyd	March 1983	2,000.00
Albert Lloyd	March 1985	2,527.00
Bruce Lloyd	October 1984	1,750.00
Thomas McCaffery	July 1983	2,001.00
David Peworchik	Summer 1984	3,700.00
Lloyd Sweet	April 1983	3,000.00
Donald Tolerson	1984	2,800.00
Stephen Yevchak	June 1985	2,005.00
Richard Carroll	July 1985	1,700.00
Stephen Bulles	April 1983	1,238.00
R. E. Marks	March 1985	1,500.00
Edward Kirstel	February 1985	2,517.00
William Stone	April 1985	1,800.00
Kenneth Heitman	March 1983	2,600.00
Herbert Eckes	May 1984	2,800.00
T. P. Koast	February 1984	2,175.00
John Crawford	July 1984	4,000.00
Lloyd Sweet	May 1985	4,000.00
	Total	$53,748.00

SUMMARY OF THE PARTIES' POSITIONS

30. Petitioner contended that the lease agreements in question were leases intended as security agreements and that therefore the interest payments made by the lessees to Chemical Bank were not subject to sales tax because such payments were made pursuant to such leases.

31. In response, the Division made a general denial of this position and contended that the lease agreements in question were true lease agreements and not security agreements.

32. Alternatively, petitioner contended that the interest payments made by the lessees to the bank were not subject to sales tax because such payments were not part of the receipts from a retail sale of tangible personal property but were charges for the use of money, an intangible.

33. In response, the Division took the position that the interest charges in question were part of the retail selling price of the leased equipment.

34. With respect to the deficiency arising from the sale of TCO-leased vehicles, petitioner contended that said deficiency should be cancelled in light of the unsound and inconsistent audit procedures. Specifically, petitioner contended that the Division improperly relied upon the lump-sum sales figure used as the basis for this portion of the deficiency (Finding of Fact "26").

35. With respect to the remaining deficiency arising from the sale of vehicles leased to TCO, petitioner contended that it had met its burden of proof with respect to the specific transactions for which it submitted proof that either tax had been paid or was not due.

36. With respect to the deficiency arising from the sale of vehicles leased to CNY, petitioner contended that said deficiency should be reduced in accordance with the evidence introduced at hearing with respect to eleven transactions to show that tax was either paid directly by the purchaser or was not due on the transaction because the purchaser was a nonresident of New York (Finding of Fact "28"). As to the balance of the deficiency arising from sales of CNY-leased vehicles, petitioner contended that it was denied access to the Department of Motor Vehicles' records and that to deny petitioner access to such records, and, at the same time, to impose the burden of proof upon petitioner, amounted to "duplicative taxation" and was "wrongful".

37. With respect to petitioner's sales of vehicles, the Division of Taxation contended that the audit procedures employed were proper and that petitioner failed to sustain its burden of proof to show that tax had been paid or was not due on said transactions.

CONCLUSIONS OF LAW

A. Section 1105(a) of the Tax Law imposes a tax on "[t]he receipts from every retail sale of tangible personal property", with certain exceptions not relevant herein. A "sale" for purposes of section 1105(a) includes a lease agreement (Tax Law § 1101[b][5]). However, "[a] lease which has been entered into merely as a security agreement, but which does not in fact represent a transaction in which there has been a transfer of possession from the lessor to the lessee, is not a 'sale' within the meaning of the Tax Law" (20 NYCRR 526.7[c][3].)

B. Whether a lease agreement is a true lease or a security agreement is properly determined by looking through the form of the agreement and examining both the intentions of the parties and the underlying substance of the transaction (see___ Matter of Bank of California, N.A., State Tax Commn., June 24, 1983; In Re Sherwood Diversified Services, Inc., 382 F Supp 1359 [SDNY 1974]; see also, Matter of Petrolane Northeast Gas Service, Inc. v. State Tax Commn., 79 AD2d 1043, lv denied 53 NY2d 601).

C. Section 1-201(37) of the New York Uniform Commercial Code offers the following guidance as to the distinction between a true lease and a lease intended as security:

> "Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security."

D. In accordance with the foregoing conclusions, an analysis of the facts present in the instant matter compels a conclusion that the lease agreements between petitioner and the Columbia System subsidiaries, CNY and TCO, were not true leases, but were, in substance, security agreements. The lessees under the subject lease agreements selected all equipment to be leased, including all specific options and modifications to such equipment. The lessees then negotiated a purchase price. Only at that point did the lessee contact petitioner to finance the purchase. The leased equipment was shipped directly from the vendor to the lessee. The lessee determined the term of the lease, which was equal to the estimated economic life of the equipment. The subject lease agreements did not provide for a purchase option to the lessee, but did provide for an extension of the lease term, indefinitely, at the lessee's option and at virtually no cost. At the termination of the lease, the vehicles were sold on petitioner's behalf by the lessee. Any proceeds of the sale in excess of the remaining principal balance owed to the bank

were retained by the lessee. With respect to the use of the leased equipment, petitioner had no rights or control over such use. Although petitioner was registered as the owner of all leased vehicles, all leased equipment was identified to the public as the lessee's and the lessee paid all registration fees and insurance. Petitioner assigned its interest in any insurance policies to the lessees and the lessees indemnified petitioner for any liability arising from the use of the vehicles. Finally, petitioner received none of the lease payments, as the lessees made payments directly to the bank. Petitioner assigned its interest in the leases to the bank. Petitioner's only remuneration was its $12,000.00 annual compensation from the Columbia System for its management services.

The above-noted facts, taken together, reveal that the lease agreements in question were, in substance, security agreements. Accordingly, payments made pursuant to said lease agreements were not properly subject to tax.

E. In reaching the conclusion set forth above, I note that throughout the period at issue, sales tax was paid on the initial purchase of equipment from vendors. I also note that petitioner did collect sales tax on the principal portion of the lessee's monthly payment to Chemical Bank. It would thus seem that the initial transaction was treated as a purchase for resale for sales tax purposes and that the monthly principal payments were treated as true lease payments. This inconsistency, however, is not fatal to petitioner's position. A similar inconsistency existed in Matter of European American Bank and Trust Company (State Tax Commn., May 23, 1985). In that case, a sales tax deficiency was premised upon a failure by a "lessor" to collect tax on a 1% increase (to 8%) in the prevailing local sales tax rate. Tax was collected on the "lease" payments, but at a 7% rate. Nonetheless, the Tax Commission determined that the lease agreement in question was, in substance, a security agreement. I further note that the Division of Taxation apparently did not consider this inconsistency to be of significance, as the Division did not raise this point.

F. In view of the foregoing conclusions, Issue II is moot.

G. Petitioner's contention that the audit method employed with respect to the deficiency arising from the sale of TCO-leased vehicles was unsound is without merit. The Division determined this portion of the deficiency from an actual sales figure provided by Mr. Arnold, an individual authorized to act on petitioner's behalf. The source of the deficiency was thus not an external index, but was petitioner itself. A deficiency based upon such an actual sales figure is premised upon a rational basis (see___, Matter of Chartair, Inc. v. State Tax Commn., 65 AD2d 44) and is cloaked with a "presumption of correctness" (see___, Matter of Double B. Auto, Inc., Tax Appeals Tribunal, September 1, 1988). The Division is not responsible to demonstrate the propriety of its assessment (Matter of Blodnick v. State Tax Commn., 124 AD2d 437, 438, lv dismissed 69 NY2d 822); the burden is upon petitioner to prove error in the audit result (Matter of Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 AD2d 858, 859).

H. Petitioner has met its burden of proof to show that sales tax was improperly assessed on the sales of vehicles discussed in Findings of Fact "28(a)", "28(b)", "29(c)" and "29(d)". As indicated in Findings of Fact "28(b)" and "29(d)", petitioner proved that sales tax was paid directly to New York by purchasers of the vehicles set forth in those Findings of Fact. The payment of $6,470.82 by Aetna Casualty and Surety Company to petitioner was made pursuant to an insurance policy and was not for the sale of tangible personal property (Finding of Fact "28[a]"). As this Finding of Fact makes clear, the vehicle transferred to Aetna had no value. Finally, petitioner proved that the sale to Armand Roa in 1984 (Finding of Fact "29[c]") was not subject to sales tax pursuant to the resale exclusion (Tax Law § 1105[a]).

I. Petitioner failed to meet its burden of proof with respect to the sales set forth in Findings of Fact "28(c)", "29(a)" and "29(b)". The sales discussed in Finding of Fact "29(a)" which occurred outside of the audit period are irrelevant. With respect to the three 1985 sales discussed in Finding of Fact "27(a)", petitioner failed to establish that such sales took place during the relevent period. The sale discussed in Finding of Fact "29(b)" is denied as an obvious failure of proof. Petitioner failed to meet its burden with respect to the sales set forth in Finding

of Fact "28(c)" because petitioner failed to show that the purchasers in question met the criteria for exemption as set forth in Tax Law § 1117(a)(1-4). Among these criteria is the requirement that the purchaser may not be engaged in employment in New York in which the vehicle will be used (Tax Law § 1117[a][3]). Petitioner failed to show that the purchased vehicles would not be used in a manner inconsistent with the requirements of Tax Law § 1117(a)(3).

J. As a registered vendor, petitioner was a person required to collect sales tax pursuant to Tax Law § 1132(a). Said section further provides that persons required to collect tax "shall collect the tax from the customer when collecting the price...to which it applies" (Tax Law § 1132[a]). Section 1132(c) of the Tax Law states that all receipts for tangible personal property are presumed to be subject to tax until the contrary is established, and places the burden of proving that any receipt is nontaxable upon the person required to collect tax, unless that person (a vendor) shall have taken from the purchaser a resale certificate or exemption certificate. With respect to motor vehicles, a vendor shall not be liable where he has received from the purchaser an affidavit pursuant to Tax Law § 1117(b).

K. Since petitioner was a person required to collect tax and did not receive from the purchasers of the motor vehicles exemption certificates, resale certificates or affidavits pursuant to Tax Law § 1117(c), it was under a duty to collect sales tax on its sales of vehicles retired from the rental fleet. The fact that section 1132(f) of the Tax Law provides that a purchaser may not register a vehicle in New York until it is proven that the sales tax is paid does not relieve petitioner of its duty to collect tax (Matter of Mendon Leasing Corp. v. State Tax Commn., 135 AD2d 917, 918, lv denied 71 NY2d 805). Similarly, refusal by the Department of Motor Vehicles to allow petitioner access to its records does not relieve petitioner of its responsibility. Accordingly, except as indicated above in Conclusion of Law "H", the Division properly imposed tax upon petitioner's sales of vehicles retired from the rental fleet of CNY and TCO.

L. The petition of Utility Leasing Corporation, Inc. is granted to the extent indicated in Conclusions of Law "D" and "H"; the Division of Taxation is directed to recompute the

assessment set forth in the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated September 11, 1986, in accordance therewith; and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

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ADMINISTRATIVE LAW JUDGE