

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
YUK ENG	:	
Officer of Dial Auto Leasing System, Inc.	:	
	:	
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, 1976	:	
through August 31, 1980.	:	

DECISION

In the Matter of the Petition	:	
	:	
of	:	
	:	
KIN LEE	:	
Officer of Dial Auto Leasing System, Inc.	:	
	:	
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, 1976	:	
through August 31, 1980.	:	

Petitioners, Yuk Eng and Kin Lee, c/o Casimir F. Sojka, Esq., 80 Mott Street, New York, New York 10013, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1976 through August 31, 1980 (File Nos. 33222 and 33691).

A formal hearing was commenced before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 11, 1984 at 1:15 P.M. and continued to conclusion at the same location on December 3, 1984 at 1:30 P.M., with additional evidence to be submitted by January 3, 1985. Petitioners appeared by Casimir F. Sojka, Esq.

The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether petitioners are liable for sales and use taxes due from Dial Auto Leasing System, Inc.

FINDINGS OF FACT

1. On February 13, 1981, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner Kin Lee, as an officer of Dial Auto Leasing System, Inc., in the amount of \$47,725.78, plus penalty of \$9,582.70 and interest of \$13,869.88, for a total due of \$71,178.36 for the period June 1, 1976 through August 31, 1980. On the same date, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Kin Lee, as an officer of Dial Auto Leasing System, Inc., in the amount of \$14,367.96, plus penalty of \$3,368.94 and interest of \$3,311.36, for a total due of \$21,048.26 for the period March 1, 1978 through May 31, 1980. On the same date, the Audit Division issued identical notices against petitioner Yuk Eng, as an officer of Dial Auto Leasing System, Inc.

2. Petitioners were planning to purchase the stock of Dial Auto Leasing System, Inc. ("Dial") in November, 1977. The transfer did not take place due to outstanding judgments, tax liabilities and liens against the business; however, petitioners actually took over the running of the operation in February, 1978 with the understanding that the prior owner of Dial, one Gerald Wren, would clear up the outstanding liabilities. The stock of Dial was held in escrow pending the clearing up of the debts. The debts were never cleared up and petitioners never received the Dial stock. Petitioners ran the business

from February, 1978 until sometime during the summer of 1980. At that time the business was sold. By whom and to whom the business was sold is completely unclear from the record; however, it is clear that petitioners were persons required to collect sales tax for Dial during the period February 1, 1978 through August 31, 1980. Prior to that time, Gerald Wren was the person required to collect tax.

3. Beginning in August, 1979, petitioners began making payments on the outstanding sales tax liability of Dial. Between August 13, 1979 and January 18, 1980, petitioners remitted ten checks totalling \$20,861.32 to the Audit Division in payment of Dial's sales tax liability. Additionally, petitioners remitted checks in the amounts of \$6,274.00, \$17,200.00 and \$28,000.00 dated September 23, 1980, December 3, 1980 and February 7, 1983, respectively. The total of all payments on Dial's sales tax liability was \$72,335.32.

4. By memorandum dated October 8, 1982, the Audit Division stated that the \$17,200.00 payment satisfied Dial's liability as reflected in notice S810126721C issued against the corporation and that any corresponding officer notices should be cancelled. There were two officer notices which corresponded to notice S810126721C issued against Dial; these were the notices of determination and demands for payment of sales and use taxes due issued against petitioners on February 13, 1981 as discussed in Finding of Fact "1". The \$17,200.00 payment in satisfaction of notice S8101267721C left \$55,135.32 in payments to be applied to the outstanding sales tax liability of Dial for the periods during which petitioners were liable.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides, in part, that every person required to collect the taxes imposed under the Sales Tax Law is also personally liable for the tax imposed, collected, or required to be collected under such law. Section 1131(1) of the Tax Law defines "persons required to

collect tax" as used in section 1133(a) to include any officer or employee of a corporation, or a dissolved corporation, who as such officer or employee is under a duty to act for the corporation in complying with any requirement of the Sales Tax Law.

B. That, inasmuch as petitioners took over the operations of Dial on February 1, 1978, they were persons required to collect sales tax for the period February 1, 1978 through May 31, 1980 regardless of whether they actually received the stock and became officers of Dial. For the period prior to February 1, 1978, they were not persons required to collect tax and were not, therefore, personally liable for the tax liability of Dial.

C. That, in light of the Audit Division's memorandum discussed in Finding of Fact '4", the two notices of determination and demands for payment of sales and use taxes due issued February 13, 1981 are cancelled. The remaining \$55,135.32 in payments made by petitioners are to be applied to the outstanding liability of Dial for the period February 1, 1978 through August 31, 1980, the period for which petitioners are personally liable.

D. That the petitions of Yuk Eng and Kin Lee are granted to the extent indicated in Conclusion of Law "C"; that the Audit Division is directed to cancel the notices of determination and demands for payment of sales and use taxes due issued February 13, 1981 and modify the notices and demands issued the same date accordingly; and that, except as so granted, the petitions are in all other respects denied.

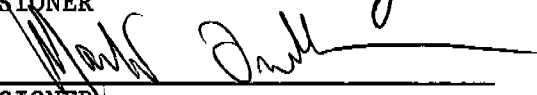
DATED: Albany, New York

MAY 23 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER