

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

AVON CARTING INDUSTRIES CO.

DECISION

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 March 1, 1982  
through November 30, 1984.

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Petitioner, Avon Carting Industries Co., 367 Mountain Avenue, Ridgewood, New Jersey 07450, 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 March 1, 1982 through November 30, 1984 (File No. 63761).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 13, 1987 at 10:45 A.M. Petitioner appeared by Joseph Virzi, Partner, and Samuel Roth, P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

#### ISSUE

Whether the petitioner is liable for tax on the purchase in New Jersey of three trucks which were subsequently used in New York.

#### FINDINGS OF FACT

1. On July 19, 1985, the Audit Division, as the result of the conduct of a field audit, issued to petitioner, Avon Carting Industries Co. ("Avon"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing additional taxes due of \$24,400.62, plus interest of \$4,490.46 for a total amount due of \$28,891.08 for the period March 1, 1982 through November 30, 1984.

2. During the period at issue, Avon, a partnership engaged in garbage collection, collected trash from office buildings in Manhattan and also operated a paper recycling plant at 1601 Madison Street, Hoboken, New Jersey. Avon's main office was located at 367 Mountain Avenue, Ridgewood, New Jersey. Avon maintained a billing and collection office at 96 Spring Street in New York city.

3. On audit, the Audit Division found that petitioner was a vendor for sales tax purposes and that it had timely filed New York State and local sales and use tax returns. The Audit Division also determined that petitioner was liable for the New York State and New York City tax on the purchase during 1983 and 1984 of three trucks which were used to collect trash in Manhattan. The auditor computed a tax due of \$24,400.62 based on the combined State and City tax rate of 8½ percent and a purchase price of \$295,765.00.

4. The three trucks, tandems in nature with an actual garbage recyclable unit on the back, with a thirty yard capacity, were purchased from the Mack Truck Company in Maspeth, New York and delivered to petitioner at Hoboken, New Jersey where they were garaged at Avon's recycling plant. Maintenance and minor repairs were performed by Avon's employees at the Hoboken facilities. Major repairs were performed in Maspeth by the Mack Truck Company. The trucks were registered in New Jersey which exempts from its Sales and Use Tax Act commercial motor vehicles registered in New Jersey and weighing more than 18,000 pounds. Therefore, no tax was paid to New Jersey on the purchase of the trucks. Five days per week the trucks were used by employees of Avon to collect trash from buildings in Manhattan between the hours of 2:00 A.M. and 6:00 A.M. The trash, which was composed mostly of recyclable paper, was transported back to petitioner's plant in Hoboken where it was recycled and

bailed for shipment to paper mills in New Jersey and Pennsylvania as well as Taiwan, Japan and Italy. Avon processes approximately 2,000 tons of paper monthly. The trucks were also used to transport nonrecyclable trash from Hoboken to dumps or landfills in New Jersey.

5. Petitioner contends that it is not liable for the tax imposed in this case because it is a New Jersey partnership and is taxable under the laws of New Jersey. Further, almost all of its operations: offices, labor, storage and recycling facilities, are in New Jersey. Petitioner also maintains that the trucks were used approximately ten hours per day transporting nonrecyclable trash from the recycling plant to the dumps.

6. Petitioners offered insufficient evidence to show that the trucks were principally used in New Jersey to transport trash to the dumps.

#### CONCLUSIONS OF LAW

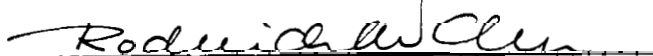
A. That it is evident that Avon's trucks were principally used in New York City and, therefore, the purchaser thereof is subject to the combined New York State and New York City compensating use tax (Tax Law § 1110; see Matter of Xerox Corp. v. State Tax Commn., 71 AD2d 177). Petitioner has failed to sustain the burden of proof required to show that the vehicles were not principally used in New York.

B. That the petition of Avon Carting Industries Co. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 19, 1985 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 25 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER