

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES PEARCE and JOHN S. SMITH :

AFFIDAVIT OF MAILING

d/b/a WOOD ACRES

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period ending :
February 28, 1972.

State of New York
County of Albany

Catherine Steele, 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 24th day of August, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon Charles Pearce & John S. Smith d/b/a Wood Acres ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Charles Pearce and John S. Smith
d/b/a Wood Acres
135 Grant Avenue
Auburn, New York 13021
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 Postal Service within the State of New York.

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.

Sworn to before me this

24th day of August, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 24, 1976

TELEPHONE: (518) **457-3850**

Charles Pearce and John S. Smith
d/b/a Wood Acres
135 Grant Avenue
Auburn, New York 13021

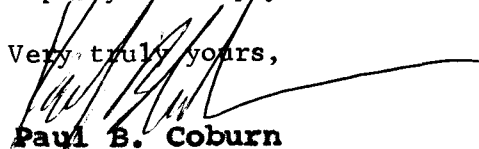
Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

~~xxxxxx Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CHARLES PEARCE and JOHN S. SMITH	:	DETERMINATION
d/b/a WOOD ACRES	:	
for Revision of a Determination or Refund	:	
of Sales and Use Taxes under Articles 28	:	
and 29 of the Tax Law for the Period	:	
ending February 28, 1972.	:	

Applicants, Charles Pearce and John S. Smith d/b/a Wood Acres, 135 Grant Avenue, Auburn, New York 13021, have filed an application for revision of a determination or for a refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period ending February 28, 1972. (Notice No. 90,774,608) A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on March 30, 1976. Applicants appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Whether applicants, Charles Pearce and John S. Smith d/b/a Wood Acres, are responsible for New York State sales tax on the purchase of a car wash system from a vendor-builder of such systems who has failed to collect said tax from applicants.

FINDINGS OF FACT

1. On December 10, 1974, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period ending February 28, 1972 in the amount of \$7,000.00 against applicants, Charles Pearce and John S. Smith d/b/a Wood Acres. Payment of \$7,000.00 plus minimum interest to February 20, 1975 of \$1,531.25 for a total of \$8,531.25 was made by them.

2. Applicants, Charles Pearce and John S. Smith d/b/a Wood Acres, entered into a written contract with the Upstate Auto Wash Co., Inc. of Rochester, New York, on July 2, 1971, in the amount of \$130,000.00, for the construction of a challenger car wash system which included building, equipment and development as a turn-key operation. The contract required Upstate to assume responsibility for any sales tax due. No sales tax was collected nor paid to the State of New York by Upstate.

3. Applicants, Charles Pearce and John S. Smith d/b/a Wood Acres, in their Federal partnership return, allocated under "Cost of Equipment" the sum of \$100,000.00, the amount upon which the New York State sales tax was determined.

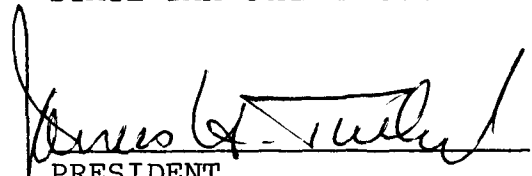
CONCLUSIONS OF LAW

A. That the applicants, Charles Pearce and John S. Smith d/b/a Wood Acres, as customers, are obligated for the payment of New York State and local sales taxes where the person required to collect the same has failed to do so within the meaning and intent of section 1133(b) of the Tax Law.

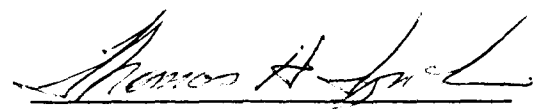
B. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is sustained and the application of Charles Pearce and John S. Smith d/b/a Wood Acres is denied.

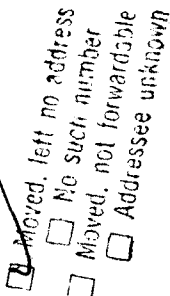
DATED: Albany, New York
August 24, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



~~Charles Pearce and John S. Smith
d/b/a Wood Acres
135 Grant Avenue
Auburn, New York 13021~~

145-1
Standard
13021

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ALBANY, NY 12202
AUG 27 1976

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RECEIVED DEPT OF TREAS & FINANCE
AUG 27 1976
REVENUE TAX HEARING OFFICER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES PEARCE and JOHN S. SMITH :
d/b/a WOOD ACRES :

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

For a Redetermination of a Deficiency or
a Refund of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ending :
February 28, 1972.

State of New York
County of Albany

Janet Mack , 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 14th day of September , 1976, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon John S. Smith

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John S. Smith
145 Standart Avenue, D-43
Auburn, NY 13021

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~~
~~xx)~~ 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

14th day of September , 1976.

