

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
OLIN RENT-A-CAR OF NEW YORK INC. :
and MORRIS C MOAD, Individually & :
as Officer :
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 Year(s) 12/1/68 through
11/30/71

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

State of New York
County of Albany

Margaret A Groelz , 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 , 1976 , she served the within
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Olin Rent-A- Car
Morris C Moad, Individually and as officer
of NY Inc. (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Olin Rent-A-Car of New York Inc.
and Morris C Moad, Individually and as officer
400 Sunrise Highway
Rockville Centre, 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 , 1976

Margaret A Groelz

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

OLIN RENT-A-CAR ^{of} NEW YORK INC. :
and MORRIS C MOAD, Individually & :
an Officer, :
For a Redetermination of a Deficiency or :
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Taxes under Article(s) 28 & 29 of the :
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11/30/71

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

State of New York
County of Albany

Margaret A. Groelz , 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 , 1976 , she served the within
Notice of ~~Decision~~ (~~or~~ Determination) by (~~certified~~) mail upon Maurice
Heffernan (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Maurice Heffernan
947 Hurod Road
Franklin Lakes, NJ 07417

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 , 1976

Janet Moad

Margaret A. Groelz



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

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

DATED: Albany, New York
April 30, 1976

□ Olin Rent-A-Car of New York Inc.
and Morris C Moad, Individually
and as Officer
400 Sunrise Highway
Rockville Centre, New York

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 A. Coburn
Paul A. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
OLIN RENT-A-CAR OF NEW YORK, INC.	:	
and	:	DETERMINATION
MORRIS C. MOAD,	:	
Individually and as an Officer,	:	
	:	
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, 1968 through	:	
November 30, 1971.	:	

Applicants, Olin Rent-A-Car of New York, Inc., and Morris C. Moad, individually and as an officer, of 400 Sunrise Highway, Rockville Center, New York, have filed an application for revision of a determination or for refund of sales and use tax under Articles 28 and 29 of the Tax Law for the period December 1, 1968 through November 30, 1971. (File No. 90,749,952). A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 18, 1974, at 1:30 p.m. Applicants appeared by Maurice Heffernan. The Sales Tax Bureau appeared by Saul Heckelman, Esq. (James Scott, Esq. of counsel).

ISSUE

Whether amounts billed to customers for collision damages to rented autos subsequent to accidents found to be due to customers' fault up to the amount of the deductible amount stated in the rental agreement are subject to sales tax as additional rent.

FINDINGS OF FACT

1. Applicants failed and refused to pay to the Sales Tax Bureau sales taxes of \$17,243.57 on charges collected from renters who had not executed a collision damage waiver (CDW) plus penalties and interest of \$5,708.20 for a total of \$22,951.77 found to be due as the result of an audit by the Sales Tax Bureau and for which a Notice of Determination and Demand for Payment of Sales and Use Tax Due was issued on February 5, 1973, for the period from December 1, 1968 through November 30, 1971.

2. Auto renters on a daily or short-term basis or lessees on a long-term basis were required during the period at issue to elect to pay \$2.00 per day for collision damage waiver (CDW) and be covered completely for any collision damage to the rented vehicle or to take the rental subject to \$50.00 or \$100.00 "deductible" which required that the auto renter pay the amount of the "deductible" to the applicant, Olin Rent-A-Car of New York, Inc., in the event

the rented vehicle suffered collision damage which was determined to be the fault of the renter.

3. Applicant, Olin Rent-A-Car of New York, Inc., collected sales tax from renters and lessees on auto gross rentals during the period in question, and reported and paid said sales tax to the Sales Tax Bureau for the period December 1, 1968 through November 30, 1971.

4. Applicant, Olin Rent-A-Car of New York, Inc., collected sales tax on the collision damage waivers (CDW) and remitted these sales taxes to the Sales Tax Bureau for the period from December 1, 1968 through November 30, 1971.

5. Applicant, Olin Rent-A-Car of New York, Inc., did not charge or collect sales tax from renters from whom applicant collected the \$50.00 or \$100.00 "deductible" in rental agreements where collision damage waivers (CDW) had not been executed. It recorded the sums received from collection of "deductible" amounts as "Insurance Income" on its books.

6. The rental agreement used by applicant in the period between December 1, 1968 and November 30, 1971 made no provision for any insurance charge to the renter covering fire, theft and liability.

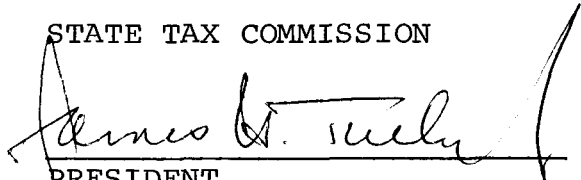
CONCLUSIONS OF LAW

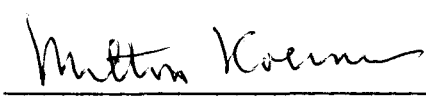
A. That the amount of the charge by Olin Rent-A-Car of New York, Inc. during the period December 1, 1968 through November 30, 1971 for collision damage to rental autos attributable to the fault of the renter was an indemnification to the lessor for the loss of use of and the damage to the rented auto as a result of the collision. The charge was not additional rent which would have been subject to retail sales tax as a sale under section 1101(b)(5) of the Tax Law.

B. That the application of Olin Rent-A-Car of New York, Inc. and Morris C. Moad, individually and as an officer, is granted and the Notice and Demand for Payment of Sales and Use Tax Due issued February 5, 1973 against them is cancelled.

DATED: Albany, New York
April 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER