

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAKELAND CONCRETE PRODUCTS INC.

AFFIDAVIT OF MAILING

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) or~~ Period(s)
July 15, 1973.

State of New York
County of Albany

Bruce Batchelor, 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 21st day of December, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Lakeland Concrete
Products Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Lakeland Concrete Products Inc.
East Main Road
Lima, New York 14485

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)~~
~~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

21st day of December, 1976

Bruce Batchelor

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

December 21, 1976

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

Lakeland Concrete Products Inc.
East Main Road
Lima, New York 14485

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1139 & 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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~Section 1139 & 1243~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
LAKELAND CONCRETE PRODUCTS 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 July 15, 1973. :

Applicant, Lakeland Concrete Products Inc., East Main Road, Lima, New York, has filed an application 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 July 15, 1973. A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two Marine Midland Plaza, Rochester, New York, on August 9, 1976, at 1:15 P.M. Applicant was represented by James Stacy, Controller. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Richard Kaufman, Esq., of counsel).

ISSUE

Was the sales tax properly paid by the applicant on the original purchase of a truck which was resold and subsequently rented back?

FINDINGS OF FACT

1. On February 11, 1975, applicant, Lakeland Concrete Products Inc., filed an application for credit or refund of state and local sales and use tax in the amount of \$1,365.00 for the sales tax paid on the purchase of a truck. The application was denied in full by the Sales Tax Bureau on May 28, 1975.
2. On July 15, 1973, applicant, Lakeland Concrete Products Inc., purchased a 1973 Brockway truck from Brockway Motor Trucks, a division of Mack trucks and paid a sales tax of \$1,365.00. The applicant used the vehicle in their business until June 5, 1974.

3. On June 5, 1974, the applicant, Lakeland Concrete Products Inc., turned the ownership of the 1973 Brockway truck over to Lincoln Leaseway Inc., for the sum of \$25,000.00. On this same day the applicant entered into a lease agreement with Lincoln Leaseway Inc., which called for a rental of the vehicle back to Lakeland Concrete Products Inc. The monthly payments in consideration of this lease were \$707.18 plus \$49.50 in sales tax for a period of 60 months.

4. The applicant, Lakeland Concrete Products Inc., contends that the sales tax paid on the original purchase of the Brockway truck and the sales tax paid on the lease of the same vehicle constitute double taxation.

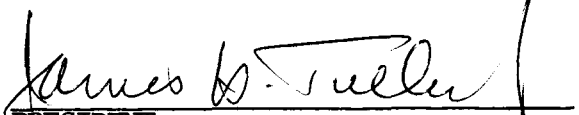
CONCLUSIONS OF LAW

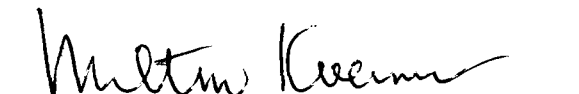
A. That the purchase of the vehicle by the applicant, Lakeland Concrete Products, Inc., was clearly a "Retail sale" as defined in section 1101(b)(4) and subject to the imposition of sales tax as imposed by section 1105(a) of the Tax Law. Although this application did not specifically deal with the imposition of sales tax on the lease of the vehicle, it is determined that the transactions for the original purchase and the subsequent rental of the vehicle are separate and distinct, subjecting both transactions to the imposition of the sales tax.

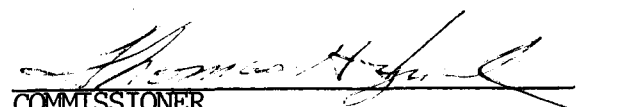
B. That the application of Lakeland Concrete Products, Inc. is denied and the refund denial issued by the Sales Tax Bureau on May 28, 1975 is sustained.

DATED: Albany, New York
December 21, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER