

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ANDREW B. GRAIG

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
May 28, 1971 and January 3, 1972.

State of New York
County of Albany

John Huhn , 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 31st day of March , 1978, ~~she~~ served the within
Notice of Determination by (~~registered~~) mail upon Andrew B. Graig

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Andrew B. Graig
249 East Main Street
Worcester, New York 12197

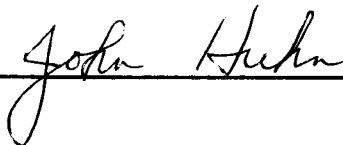
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~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

31st day of March , 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

March 31, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. Andrew B. Graig
249 East Main Street
Worcester, New York 12197

Dear Mr. Graig:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1139 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
ANDREW B. GRAIG :
for Revision of a Determination or for : DETERMINATION
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Periods May 28, 1971 and January 3, :
1972. :

Applicant, Andrew B. Graig, 249 East Main Street, Worcester,
New York 12197, 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 periods May 28, 1971 and January 3, 1972
(File No. 11321).

A small claims hearing was held before Joseph Chyrywaty,
Hearing Officer, at the offices of the State Tax Commission, State
Office Building, Binghamton, New York, on October 21, 1976 at
9:15 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared
by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund of sales tax paid
on the purchase of a tractor and a trailer.

FINDINGS OF FACT

1. On May 1, 1972, applicant, Andrew B. Graig, filed an application for credit or refund of state and local sales and use tax in the amount of \$1,402.36. The amount represented the sales tax paid by him on the purchase of a tractor and a trailer. The application was denied in full by the Sales Tax Bureau on June 6, 1973. Applicant timely protested this determination of the Sales Tax Bureau.

2. Applicant, a New York State resident, purchased an International Tractor from Van Wagenen, Inc. of Cobleskill, New York, on May 28, 1971. On January 3, 1972, he purchased a Great Dane Trailer from Great Dane Trailer Sales of Florida, New York. He took possession of both vehicles within New York State.

3. Applicant is registered with the New York State Sales Tax Bureau and has filed sales tax returns indicating that he made no taxable sales.

4. Subsequent to the purchase of the above equipment, applicant, as "Lessor", entered into agreements with Safeway Truck Lines Division of Midwest Emery Freight System, Inc. ("Safeway"), as "Lessee", for the use thereof. The agreements, entitled "Equipment Lease", provide that applicant, agrees to provide the equipment for a certain specified period. Each lease further provides that Safeway shall have exclusive possession, control and use of said equipment during the term of the lease, i.e.:

"Notwithstanding any provisions contained herein which might be construed otherwise, the Lessee shall have the exclusive possession, control, and use of the said equipment when operated by the Lessee; and during the period the vehicle is operated in its service, Lessee completely assumes full responsibility to the public, the shippers, and to all state and federal regulatory bodies or authorities." (Supplement B. to Equipment Lease).

5. Applicant does not possess any certificate of authority to transport merchandise from state to state or from point to point within a state. The "Equipment Lease" is the only instrument by which applicant may effect legal transportation of merchandise.

6. Applicant receives from Safeway a percentage of the gross revenue per trip. Applicant pays all property taxes, license taxes, road taxes and tolls, as well as fuel, oil, tire and repair costs.

CONCLUSIONS OF LAW

A. That the agreement, known as an "Equipment Lease", entered into between applicant and Safeway gives Safeway the exclusive possession, control, and use of applicant's equipment.

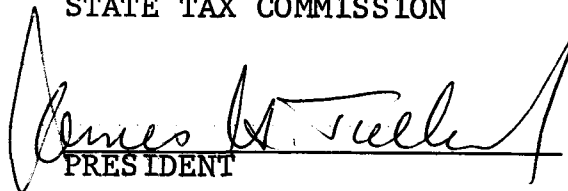
B. That the "Equipment Lease" entered into between applicant and Safeway constituted an agreement for rental, lease, transfer of possession or license to use, for a consideration, within the meaning and intent of section 1101(b)(5) of the Tax Law and thus was a sale the receipts from which were subject to sales tax under section 1105(a) of the Tax Law.

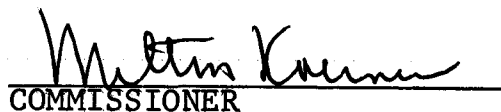
C. That the purchase of the tractor and the purchase of the trailer by applicant were purchases for resale within the meaning and intent of section 1101(b)(4)(i) of the Tax Law.

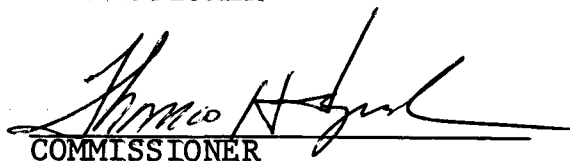
D. That the application of Andrew B. Graig is granted and the Sales Tax Bureau is hereby directed to refund \$1,402.36 together with such interest as may be lawfully owing.

DATED: Albany, New York
March 31, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER