

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
KINCAR LEASING CORP. formerly KINCAR  
AUTO CORP. and KINCAR RENT-A-CAR, INC.,  
formerly WHEELS BY KINCAR, INC.  
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 ~~XX~~ :  
October 1, 1968 to August 31, 1971.

AFFIDAVIT OF MAILING

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 29th day of March, 1978, she served the within

Kincar Leasing Corp., for.

Notice of Determination by ~~XXXXXXXXXX~~ mail upon Kincar Auto Corp. and  
Kincar Rent-A-Car, Inc.  
formerly Wheels by ~~XXXXXXXXXX~~ the petitioner in the within proceeding,  
Kincar, Inc.

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Kincar Leasing Corp., formerly Kincar Auto Corp.  
as follows: and Kincar Rent-A-Car, Inc., formerly Wheels by Kincar, Inc.  
1430 Broadway  
New York, NY

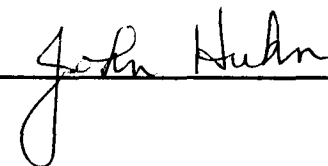
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

29th day of March, 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
KINCAR LEASING CORP., formerly KINCAR  
AUTO CORP. and KINCAR RENT-A-CAR, INC.  
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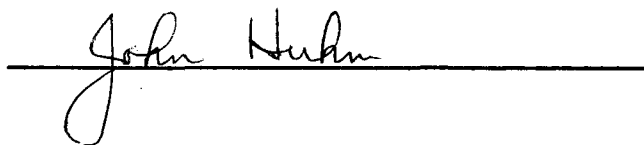
John Huhn, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 29th day of March, 1978, she served the within  
Notice of Determination by ~~XXXXXXX~~ mail upon John E.  
Tuchler, CPA (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John E. Tuchler, CPA  
Fass, Tuchler & Muster  
98 Cutter Mill Road  
Great Neck, New York 11021  
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

29th day of March, 19 78







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

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

**March 29, 1978**

**Kinear Leasing Corp.,  
Formerly Kinear Auto Corp.  
and Kincar Rent-A-Car, Inc.,  
Formerly Wheels by Kinear, Inc.**

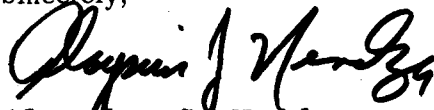
**Gentlemen:**

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) **1138 & 1250** 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,

  
**Aloysius J. Nendza**  
**Assistant Director**

cc: Petitioner's Representative  
  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1976 at 10:30 A.M. Applicants appeared by Fass, Tuchler & Muster (John E. Tuchler, CPA, of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

## ISSUES

I. Whether the Sales Tax Bureau's assessments of a deficiency in sales and use taxes were timely made.

II. Whether amounts paid by the lessees of rented automobiles as "turn-in damages" were subject to sales taxes as additional rent for said automobiles.

III. Whether penalties and interest should be abated on the grounds that the delay in paying the sales tax deficiency was excusable.

#### FINDINGS OF FACT

1. On June 26, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Kincar Leasing Corp. for the period October 1, 1968 through August 31, 1971, assessing a tax deficiency of \$82,040.16, plus penalties and interest of \$32,395.89, for a total allegedly due of \$114,436.05. On June 13, 1974, a Notice of Assessment Review was sent to Kincar Leasing Corp. revising the tax due to \$67,263.72, plus adjusted penalty and interest of \$21,827.61, less \$49,059.29 already paid, for an amount then allegedly due of \$40,032.04. On June 13, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Kincar Rent-A-Car, Inc. for the period October 1, 1968 through August 31, 1971, assessing a tax deficiency of \$14,745.52, plus penalty and interest of \$5,966.80, for a total allegedly due of \$20,712.32. On June 13, 1974, a Notice of Assessment Review was sent to Kincar Rent-A-Car, Inc. revising the tax due to \$8,469.36 plus adjusted penalty and interest of \$3,924.04 less \$1,543.13 already paid on the assessment for an amount then allegedly due of \$10,850.27.

On November 5, 1971, a corporate officer of Kincar Auto Corp. executed and delivered to the Sales Tax Bureau a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes for the period October 1, 1968 through August 31, 1971 to and including December 19, 1972. On October 18, 1972, Kincar Leasing Corp. (formerly Kincar Auto Corp.) executed a consent extending the time to make assessment of sales taxes to December 19, 1973. Consents executed by the same corporate officer of Wheels By Kincar, Inc. and its successor corporation Kincar Rent-A-Car, Inc. on November 5, 1971 and October 18, 1972 extended the time within which the Sales Tax Bureau might make assessment of sales taxes due to and including December 19, 1973.

On July 26, 1973, applicants, Kincar Leasing Corp. (formerly Kincar Auto Corp.) and Kincar Rent-A-Car, Inc. (formerly Wheels By Kincar, Inc.) both hereinafter "Kincar," filed applications for a formal hearing to review the determinations of the Sales Tax Bureau as to sales and use taxes due for the period October 1, 1968 through August 31, 1971.

2. Applicants, Kincar, are in the business of renting and leasing automobiles. Prior to taking possession of an auto from Kincar, the lessee was required to acquire liability and property damage automobile insurance, including coverage for collision with a maximum deductible of \$100.00. This was independent of the overall insurance carried by Kincar as owner of the rented autos.

3. A separate clause in the rental lease was entitled "Damages to Leased Vehicles." It provided inter alia that the lessee assumed full responsibility and liability for any damages to the leased auto, and lessee agreed to report promptly to applicants, Kincor, the occurrence of any damage. The lease further provided that whether or not there was legal liability on either or both lessee and applicants, Kincor, the "...Lessee shall promptly pay and be initially liable for the first \$100.00 or the full amount thereof, whichever is lesser, of the cost and expense incurred for each such repair performed...."

4. The lessee agreed that at any time during the term of the lease or upon its termination, he would make prompt payment to applicants, Kincor, for the full amount of any damages to the vehicle not previously reported to the lessor.

5. When leased automobiles were "turned in" to applicants, Kincor, examination frequently revealed damages which had not been reported by the lessee. Applicants, Kincor, then requested the lessee to reimburse them for the amount by which the damages to the auto exceeded normal wear and tear for the period of the lease.

6. The amounts of damage to rented automobiles not covered by the insurance company and the amount of damage sustained in unreported accidents were charged to lessees by applicants, Kincor, and entered on applicants' books as "turn-in damages."

7. Automobiles with extensive damages were called "rough" cars and automobiles returned with little or no damage were called "clean cars." A sample comparison of the sales prices for "rough" autos (plus "turn-in damages") with the sales prices for "clean" autos (plus "turn-in damages") indicates that the "turn-in damages" did not approach the loss in average sale price by several hundred dollars. The comparison is for automobiles of the same year and type and is also for equivalent mileage.

8. Applicants, Kincar, did not repair nor cause to be repaired the leased automobiles returned by lessees at the termination of the rentals. The autos were sold by applicants, Kincar.

9. Applicants, Kincar, collected sales tax from lessees on the gross amount of the automobile rental and timely reported and paid over that amount to the Sales Tax Bureau in the period October 1, 1968 through August 31, 1971. No sales tax was collected or reported on amounts collected as "turn-in damages" during the period in question.

10. Applicants, Kincar, relied in good faith on the advice of their attorneys that the amounts of "turn-in damages" were not subject to sales tax.

#### CONCLUSIONS OF LAW

A. That the assessments were timely made. Both Kincar Rent-A-Car, Inc. and Kincar Leasing Corp. and their predecessor corporations



executed successive consents extending the time within which the Sales Tax Bureau could make assessments to and including December 19, 1973. The assessments were made June 13, 1973 and June 26, 1973.

B. Payments made by lessees as "turn-in damages" were not additional rent for the lessee's use of the automobile, but rather were indemnity for the lessee's breach of the lease provision relating to reporting automobile damage promptly to the lessor. They were not subject to sales tax.

The letting of a chattel for hire constitutes a bailment at common law. An auto rentor is in the same class of bailors for hire as the livery stable-keeper was and is under common law. (Atkins -v- Hertz Drivursel Stations, 261 N.Y. 352, 185 N.E. 408, aff'd 291 U.S. 641, 78 L. Ed. 1039, 54 S. Ct. 437; 68 A.L.R. 1002).

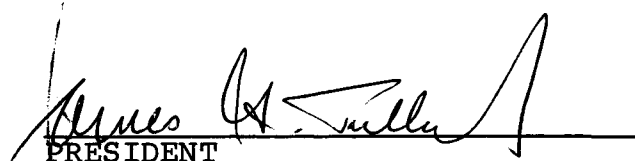
"The parties to a bailment may, by special provisions, extend the liability of the bailee to that of an insurer and indemnitor of the bailor against any claims or liabilities arising out of the use of the subject of the bailment."


(8 Am. Jur. 2d Bailment #138; 46A.L.R. 2d 410 #3)

C. That the applications of Kincar Leasing Corp. (formerly Kincar Auto Corp.) and Kincar Rent-A-Car, Inc. (formerly Wheels By Kincar, Inc.) are granted and the notices of determination and demand for payment of sales and use taxes due issued June 13, 1973 and June 26, 1973, and revised by the notices of assessment review issued June 13, 1974 are cancelled.

DATED: Albany, New York  
March 29, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
TAX APPEALS BUREAU

TO... Ms. Davis .....

Please attach to original  
determination.

4/20/78

M-75 (8/76)

From Aloysius Nendza

All we have in  
files is reg card  
for Kincor Auto Corp  
10 Rockefeller Plaza  
N.Y. N.Y. 10020

NY 735 7050  
reg date 10/15/68

X referenced to  
13-2619648

All State Vehicles Inc.  
Folder chgd out to  
A & R P.M.L. 3/23/78

4/19/78 Hm B

REQUEST FOR BETTER ADDRESS

Requested by  Lynn Lace	Unit  Formal Hearing Unit	Date of Request  4/17/78
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition
Name Kincar Leasing Corp., Formerly Kincar Auto Corp. And Kincar Rent-A-Car, Inc., Formerly Wheels by Kincar, Inc.	
Address 1430 Broadway, New York, New York City	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by  <i>HMB</i>	Section  <i>Files Unit B</i>	Date of Search  <i>4/19/78</i>
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PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER



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

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

March 29, 1978

Kincar Leasing Corp.,  
Formerly Kincar Auto Corp.  
and Kincar Rent-A-Car, Inc.,  
Formerly Wheels by Kincar, Inc.


Gentlemen:

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) **1138 & 1250** 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,

  
Aloysius J. Nendza  
Assistant Director

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Applications :  
of :  
KINCAR LEASING CORP., :  
formerly KINCAR AUTO CORP. : DETERMINATION  
and KINCAR RENT-A-CAR, INC., :  
formerly WHEELS BY KINCAR, INC. :  
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 October 1, 1968 to August 31, :  
1971. :  
:

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Applicants, Kincar Leasing Corp. (formerly Kincar Auto Corp.)  
and Kincar Rent-A-Car, Inc. (formerly Wheels By Kincar, Inc.),  
filed applications 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 October 1, 1968 through August 31, 1971 (File Nos. 00204  
and 00205).

A formal hearing was held before Edward L. Johnson, Hearing  
Officer, at the offices of the State Tax Commission, Two World  
Trade Center, New York, New York, on September 17, 1976 at 10:30 A.M.  
Applicants appeared by Fass, Tuchler & Muster (John E. Tuchler, CPA,  
of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq.  
(Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the Sales Tax Bureau's assessments of a deficiency  
in sales and use taxes were timely made.





TA-26 (4-76) 25M **FORMAL HEARING**

**STATE OF NEW YORK**

Department of Taxation and Finance

**TAX APPEALS BUREAU**

STATE CAMPUS

ALBANY, N. Y. 12227

Kincar Leasing Corp.  
Formerly Kincar Auto Corp.  
and Kincar Rent-A-Car, Inc.,  
Formerly Wheels by Kincar, Inc.  
1430 Broadway  
New York, NY

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II. Whether amounts paid by the lessees of rented automobiles as "turn-in damages" were subject to sales taxes as additional rent for said automobiles.

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3. A separate clause in the rental lease was entitled "Damages to Leased Vehicles." It provided inter alia that the lessee assumed full responsibility and liability for any damages to the leased auto, and lessee agreed to report promptly to applicants, Kincor, the occurrence of any damage. The lease further provided that whether or not there was legal liability on either or both lessee and applicants, Kincor, the "...Lessee shall promptly pay and be initially liable for the first \$100.00 or the full amount thereof, whichever is lesser, of the cost and expense incurred for each such repair performed...."

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5. When leased automobiles were "turned in" to applicants, Kincor, examination frequently revealed damages which had not been reported by the lessee. Applicants, Kincor, then requested the lessee to reimburse them for the amount by which the damages to the auto exceeded normal wear and tear for the period of the lease.

6. The amounts of damage to rented automobiles not covered by the insurance company and the amount of damage sustained in unreported accidents were charged to lessees by applicants, Kincor, and entered on applicants' books as "turn-in damages."

7. Automobiles with extensive damages were called "rough" cars and automobiles returned with little or no damage were called "clean cars." A sample comparison of the sales prices for "rough" autos (plus "turn-in damages") with the sales prices for "clean" autos (plus "turn-in damages") indicates that the "turn-in damages" did not approach the loss in average sale price by several hundred dollars. The comparison is for automobiles of the same year and type and is also for equivalent mileage.

8. Applicants, Kincar, did not repair nor cause to be repaired the leased automobiles returned by lessees at the termination of the rentals. The autos were sold by applicants, Kincar.

9. Applicants, Kincar, collected sales tax from lessees on the gross amount of the automobile rental and timely reported and paid over that amount to the Sales Tax Bureau in the period October 1, 1968 through August 31, 1971. No sales tax was collected or reported on amounts collected as "turn-in damages" during the period in question.

10. Applicants, Kincar, relied in good faith on the advice of their attorneys that the amounts of "turn-in damages" were not subject to sales tax.

#### CONCLUSIONS OF LAW

A. That the assessments were timely made. Both Kincar Rent-A-Car, Inc. and Kincar Leasing Corp. and their predecessor corporations

executed successive consents extending the time within which the Sales Tax Bureau could make assessments to and including December 19, 1973. The assessments were made June 13, 1973 and June 26, 1973.

B. Payments made by lessees as "turn-in damages" were not additional rent for the lessee's use of the automobile, but rather were indemnity for the lessee's breach of the lease provision relating to reporting automobile damage promptly to the lessor. They were not subject to sales tax.

The letting of a chattel for hire constitutes a bailment at common law. An auto rentor is in the same class of bailors for hire as the livery stable-keeper was and is under common law. (Atkins -v- Hertz Drivurself Stations, 261 N.Y. 352, 185 N.E. 408, aff'd 291 U.S. 641, 78 L. Ed. 1039, 54 S. Ct. 437; 68 A.L.R. 1002).

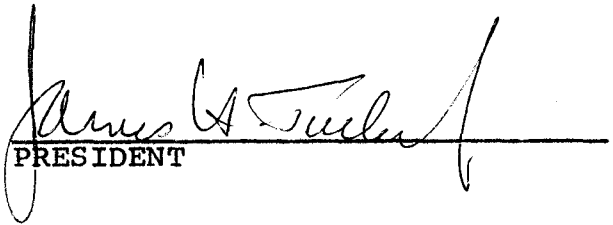
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(8 Am. Jur. 2d Bailment #138; 46A.L.R. 2d 410 #3)

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DATED: Albany, New York  
March 29, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

The following information was obtained from the records of the [redacted] Department of the [redacted] Government, dated [redacted].

[The remainder of the page contains extremely faint, illegible text.]



7. Automobiles with extensive damages were called "rough" cars and automobiles returned with little or no damage were called "clean cars." A sample comparison of the sales prices for "rough" autos (plus "turn-in damages") with the sales prices for "clean" autos (plus "turn-in damages") indicates that the "turn-in damages" did not approach the loss in average sale price by several hundred dollars. The comparison is for automobiles of the same year and type and is also for equivalent mileage.

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"The parties to a bailment may, by special provisions, extend the liability of the bailee to that of an insurer and indemnitor of the bailor against any claims or liabilities arising out of the use of the subject of the bailment."

(9 Am. Jur. 2d Bailment §138; 46A.L.R. 2d 410 §3)

THE UNITED STATES OF AMERICA  
DO hereby certify that  
[Name] is a citizen of the United States of America.

Witness my hand and seal of office this [Date] day of [Month], 19[Year].  
[Signature]  
[Title]

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this [Date] day of [Month], 19[Year].  
[Signature]  
[Title]

THE UNITED STATES OF AMERICA  
DO hereby certify that  
[Name] is a citizen of the United States of America.

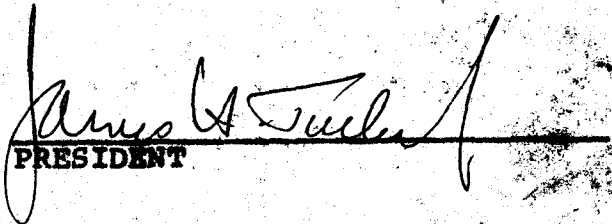
Witness my hand and seal of office this [Date] day of [Month], 19[Year].  
[Signature]  
[Title]

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this [Date] day of [Month], 19[Year].  
[Signature]  
[Title]

C. That the applications of Kincar Leasing Corp. (formerly Kincar Auto Corp.) and Kincar Rent-A-Car, Inc. (formerly Wheels By Kincar, Inc.) are granted and the notices of determination and demand for payment of sales and use taxes due issued June 13, 1973 and June 26, 1973, and revised by the notices of assessment review issued June 13, 1974 are cancelled.

DATED: Albany, New York  
March 29, 1978

STATE TAX COMMISSION

  
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COMMISSIONER

100