

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

September 30, 1983

Castle Ford, Inc.
Mohawk St. & 4th Ave.
Herkimer, NY 13350

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 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 Law 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael A. Castle
10 West Albany Street
Herkimer, NY 13350
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
CASTLE FORD, 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 September 1,
1975 through May 31, 1978.

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DECISION

Petitioner, Castle Ford, Inc., Mohawk Street and 4th Avenue, Herkimer, New York 13350, filed a petition 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 September 1, 1975 through May 31, 1978 (File No. 25275).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on March 9, 1983, at 9:15 A.M. Petitioner appeared by Michael A. Castle, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether certain purchases of supplies and materials are subject to sales and use taxes.

FINDINGS OF FACT

1. Petitioner, Castle Ford, Inc., was engaged in the sales and service of automobiles.
2. On October 30, 1978, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1975 through May 31,

1978 for taxes due of \$1,090.65, plus penalty and interest of \$432.78, for a total of \$1,523.43.

3. On audit, the Audit Division reviewed purchase invoices for recurring expense items for the calendar year 1977 and found that petitioner did not pay sales or use tax on purchases amounting to \$9,914.55. These results were used to estimate taxable purchases of \$27,265.56 for the audit period (\$9,914.55 X 2.75 years) with tax due thereon of \$1,090.62.

4. Counsel for the Audit Division conceded that petitioner maintained adequate books and records from which the exact liability could have been determined and that based on Matter of Chartair, Inc. v. State Tax Commission, 65 A.D. 2d 44, a test period audit was improper and the taxes due are limited to \$396.58, the actual amount found due for 1977.

5. The taxability of the following purchases are at issue herein:

office supplies, printed forms and envelopes	\$1,283.91
car wash soap	226.05
roof repair	55.00
building maintenance	139.89
body shop materials	3,497.71
	<u>\$5,202.56</u>

Petitioner conceded its liability with respect to the balance of the purchases totaling \$4,711.99.

6. The purchases categorized as office supplies, printed forms and envelopes are the paperwork involved in the sale and delivery of an automobile. Petitioner's purchase order itemizes various charges to the customer. One such charge is \$15.60 for P.F.O. (prepare for delivery). Petitioner argued the charge represents \$15.00 for the paperwork, which the customer receives a copy, plus \$.60 for sales tax.

7. Petitioner argued that the type of car wash soap it used added lustre to the automobile's finish and therefore became a physical component part.

8. Petitioner argued that the roof repair was a nontaxable capital improvement.

9. The purchases categorized as building maintenance consist of flashlight batteries and electrical supplies. Petitioner argued that these items are recorded in a maintenance account as a bookkeeping convenience and that 60 percent are actually sold to the customer in repair work (i.e. replace a fuse).

10. The body shop materials consist of such items as sandpaper, cleaner, tape, and spray guns. Every repair order for body work charges the customer separately for "body material". The charge is based on a percentage of the total repair bill. Petitioner collected sales tax on the total charge.

11. Petitioner took the position that except for the roof repair (Finding of Fact "8"), either (1) sales tax is collected from the customer and double taxation would result if it was required to pay tax when the items were purchased, or (2) the item becomes a physical component part of the automobile.

12. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax on "the receipts from every retail sale of tangible personal property".

That section 1101(b)(4) of the Tax Law defines "retail sale" as

"...(i) A sale of tangible personal property to any person for any purpose, other than (A) for resale of such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax..."

B. That the purchases set forth in Finding of Fact "5" (excluding roof repair) are used or consumed by petitioner in its business operations and were not for "resale" within the meaning and intent of section 1101(b)(4)(i)(A) or (B) of the Tax Law.

Petitioner was required to collect sales tax on the total charge to the customer including all expenses incurred in making the sale, regardless of their taxable status and regardless of whether they are billed to a customer [20 NYCRR 526.5(e)]. Accordingly, said purchases are subject to the taxes imposed under sections 1105(a) and 1110 of the Tax Law.

C. That the penalty is cancelled and interest shall be reduced to the minimum statutory rate.

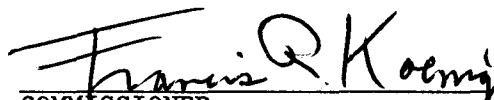
D. That the petition of Castle Ford, Inc. is granted to the extent that the additional taxes due are reduced to \$396.58 (Finding of Fact "4) plus minimum interest; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 30, 1978; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 30 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of
Castle Ford, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax
under Article 28 & 29 of the Tax Law for the Period:
9/1/75 - 5/31/78.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 30th day of September, 1983, she served the within notice of Decision by certified mail upon Castle Ford, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Castle Ford, Inc.
Mohawk St. & 4th Ave.
Herkimer, NY 13350

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
30th day of September, 1983.

Susan Powell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Castle Ford, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 9/1/75 - 5/31/78.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 30th day of September, 1983, she served the within notice of Decision by certified mail upon Michael A. Castle the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael A. Castle
10 West Albany Street
Herkimer, NY 13350

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
30th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



P 470 316 039

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Castle Ford, Inc.	
Street and No.	
Mohawk St. & 4th Ave.	
P.O., State and ZIP Code	
Herkimer, NY 13350	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 470 316 040

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Michael A. Castle	
Street and No.	
10 West Albany Street	
P.O., State and ZIP Code	
Herkimer, NY 13350	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982