

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

February 11, 1983

Jamestown Automobile Club, Inc.  
511 W. Fifth St.  
Jamestown, NY 14701

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 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:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Robert C. Wetter  
Peat, Marwick, Mitchell & Co.  
700 Main Place Tower  
Buffalo, NY 14202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Jamestown Automobile Club, 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:  
3/1/76-2/28/79.

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State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of February, 1983, he served the within notice of Decision by certified mail upon Jamestown Automobile Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jamestown Automobile Club, Inc.  
511 W. Fifth St.  
Jamestown, NY 14701

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  
11th day of February, 1983.

David Parchuck

Samie A. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Jamestown Automobile Club, 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 3/1/76-2/28/79. :

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State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of February, 1983, he served the within notice of Decision by certified mail upon Robert C. Wetter the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert C. Wetter  
Peat, Marwick, Mitchell & Co.  
700 Main Place Tower  
Buffalo, NY 14202

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  
11th day of February, 1983.

David Parchuck

Annunzio A. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION

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|---|---|----------|
| In the Matter of the Petition                   | : |          |
| of  | : |          |
| JAMESTOWN AUTOMOBILE CLUB, INC.                 | : | DECISION |
| 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 March 1, 1976     | : |          |
| through February 28, 1979.                      | : |          |

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Petitioner, Jamestown Automobile Club, Inc., 511 West Fifth Street, Jamestown, New York 14701, 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 March 1, 1976 through February 28, 1979 (File No. 29203).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on May 13, 1982 at 10:45 A.M. Petitioner appeared by Robert C. Wetter, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner's purchases of traffic safety literature which are distributed free to schools and the public are subject to tax.

FINDINGS OF FACT

1. Petitioner, Jamestown Automobile Club, Inc. ("Club"), is the local affiliation of the American Automobile Association. As part of its overall program of public service, the Club provides the public with information and training about traffic safety. Safety materials are distributed free and

consist primarily of traffic safety brochures and school safety patrol regalia. These materials are purchased from the National American Automobile Association.

2. On December 10, 1979, 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 March 1, 1976 through February 28, 1979 for taxes due of \$179.04, plus minimum statutory interest of \$32.58, for a total of \$211.62. The taxes determined due resulted from petitioner's failure to pay tax on the purchases of the safety materials referred to above.

3. Counsel for the Audit Division stated that the tax determined for the three-year audit period was estimated based on records examined for the test period of December 1, 1977 through May 31, 1978, and that such estimate was not necessary since complete books and records were available. Therefore, counsel conceded that the tax should be reduced to \$27.80 to reflect the actual tax found due for the test period.

4. Petitioner's position is that its purchases of safety materials should not be subject to tax for the following reasons:

(i) The Club's objective in purchasing and contributing the safety materials to the schools is for the public betterment and to inform students as part of their primary school education of the benefits of traffic safety.

(ii) The Club is purchasing the safety materials as agent for an exempt organization.

(iii) To tax these purchases militates against the benefit the Club is trying to afford the general public and appears to be motivated by the letter rather than the spirit of the law.

CONCLUSIONS OF LAW

A. That petitioner did not make the purchases of safety materials as an agent on behalf of a principal. It is recognized that petitioner is providing information for the benefit of the public; however, the Tax Law does not provide an exemption for these purchases under the circumstances herein.

B. That petitioner's purchases of the safety materials were retail sales of tangible personal property which are subject to the tax imposed under section 1105(a) of the Tax Law.

C. That in accordance with Finding of Fact "3", the tax due is reduced to \$27.80.

D. That the petition of Jamestown Automobile Club, Inc. is granted to the extent indicated in Conclusion of Law "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 10, 1979; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

**FEB 11 1983**

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

**P 389 758 578**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

|  |           |
|--|-----------|
| Sent to<br><i>Jamestown Automobile Club, Inc.</i>                |           |
| Street and No.<br><i>511 W. Fifth St.</i>                        |           |
| P.O., State and ZIP Code<br><i>Jamestown, NY 14701</i>           |           |
| Postage  | \$        |
| Certified Fee  |           |
| Special Delivery Fee   |           |
| Restricted Delivery Fee  |           |
| Return Receipt Showing<br>to whom and Date Delivered             |           |
| Return Receipt Showing to whom,<br>Date, and Address of Delivery |           |
| <b>TOTAL Postage and Fees</b>                                    | <b>\$</b> |
| Postmark or Date   |           |

PS Form 3800, Feb. 1982

**P 389 758 579**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

|  |           |
|--|-----------|
| Sent to <i>Robert L. Weter</i>                                   |           |
| Street and No.<br><i>Peat, Marwick, Mitchell &amp; Co.</i>       |           |
| P.O., State and ZIP Code<br><i>700 Main Place Tower</i>          |           |
| <i>Buffalo, NY 14202</i>   |           |
| Postage  | \$        |
| Certified Fee  |           |
| Special Delivery Fee   |           |
| Restricted Delivery Fee  |           |
| Return Receipt Showing<br>to whom and Date Delivered             |           |
| Return Receipt Showing to whom,<br>Date, and Address of Delivery |           |
| <b>TOTAL Postage and Fees</b>                                    | <b>\$</b> |
| Postmark or Date   |           |

PS Form 3800, Feb. 1982