

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

April 27, 1983

M. W. Leasing Corp.
855 Sunrise Hwy.
Lynbrook, NY 11563

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
Mitchell Weiss
1644 William Street
Baldwin, NY 11510
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
M. W. Leasing Corp. :
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 8/31/76-11/30/79. :
_____ :

AFFIDAVIT OF MAILING

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 27th day of April, 1983, he served the within notice of Decision by certified mail upon M. W. Leasing Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

M. W. Leasing Corp.
855 Sunrise Hwy.
Lynbrook, NY 11563

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
27th day of April, 1983.

David Parchuck

James A. Hegelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
M. W. Leasing Corp.	:	
for Redetermination of a Deficiency or a Revision :		AFFIDAVIT OF MAILING
of a Determination or a Refund of Sales & Use Tax :		
under Article 28 & 29 of the Tax Law for the :		
Period 8/31/76-11/30/79.	:	

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 27th day of April, 1983, he served the within notice of Decision by certified mail upon Mitchell Weiss the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mitchell Weiss
1644 William Street
Baldwin, NY 11510

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
27th day of April, 1983.

David Parchuck

James A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
M. W. LEASING CORP.	:	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 June 1, 1976	:	
through November 30, 1979.	:	

Petitioner, M. W. Leasing Corp., 855 Sunrise Highway, Lynbrook, New York 11563, 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 June 1, 1976 through November 30, 1979 (File No. 31438).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1982 at 2:45 P.M. Petitioner appeared by Charles W. Weiss, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed certain nontaxable sales reported by petitioner.

FINDINGS OF FACT

1. Petitioner, M. W. Leasing Corp., is primarily engaged in the lease of automobiles. Petitioner also sells the automobiles after the periods of the leases.

2. On July 21, 1980, 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 June 1, 1976 through November 30, 1979 for taxes due of \$2,969.30, plus minimum statutory interest of \$539.87, for a total of \$3,509.17.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1976 through February 28, 1979, to September 20, 1980.

4. On audit, the Audit Division, based on a statistical sample of \$65,370.01 in daily rentals and long term lease agreements during the period November 1, 1977 through October 30, 1978, found additional taxes due of \$44.68 (\$38.15 was due to disallowed nontaxable sales to The Order of Akhaldan, Inc.). This result was used to project additional taxable sales (leases) of \$33,394.96 for the entire audit period and tax due thereon of \$2,416.80.

The Audit Division reviewed petitioner's sales of vehicles in detail for the audit period which resulted in disallowed nontaxable sales of \$7,750.00 (\$6,750.00 were sales to the Institute for Self Development) and tax due thereon of \$552.50.

The sales to The Order of Akhaldan, Inc. and the Institute for Self Development were disallowed on the basis that exemption certificates were not furnished by said organizations to petitioner.

These are the only sales at issue.

5. The Audit Division explained to petitioner the testing methods it intended to use prior to starting the audit. Petitioner agreed to the use of the test period.

6. On September 19, 1979, petitioner was furnished with an Exempt Organization Certification from The Independent Church of the Realization of

the Word of God, Inc. (hereinafter Church) to substantiate the tax exemption claimed by The Order of Akhaldan, Inc. (Order) and the Institute for Self Development (Institute).

Upon receipt of the certificate petitioner requested certain information regarding the relationship of the Church with the Order and the Institute. The Church responded on December 11, 1979.

The Audit Division did not accept said certificate to exempt the lease and sale of vehicles to the Order and the Institute, respectively. The Audit Division took the position that such organizations were separate divisions of the Church and were required to obtain their own Exempt Organization Certification.

The Order of Akhaldan, Inc. operated as the business branch of the Church. It had its own checking account and paid all expenses relative to the living activities of the ministers of the Church. The Order leased five vehicles from petitioner and the lease payments were made from its account.

During the period of the leases, the Institute for Self Development was formed and replaced the Order as the business arm of the Church. At such time, the Order became inactive and the foregoing lease payments were made from the Institute's checking account. When the leases expired, the vehicles were purchased in the name of the Institute.

The funds in the account of the Order and the Institute were funds of the Church.

7. The Department of Taxation and Finance granted exempt organization status to the Church on February 13, 1975 under certificate number EX 146921.

8. On June 26, 1981, the Institute filed an Application for an Exempt Organization Certificate. On August 12, 1981, the Department of Taxation and Finance denied said application on the grounds that the Institute was an integral part of the Church rather than a separate legal entity.

9. On July 24, 1980, pursuant to section 130 of the General Business Law, the Church filed a Certificate of Assumed Name with the Department of State indicating that the Institute was the assumed name of the Church.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law provides, in pertinent part, that it shall be presumed that all receipts for property or services...are subject to tax until the contrary is established, and the burden of proving that any receipt...is not taxable shall be upon the person required to collect tax or the customer. Unless...(2) the purchaser prior to taking delivery, furnishes to the vendor: any affidavit...demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen... Where such a certificate or statement has been furnished to the vendor, the burden of proving that the receipt...is not taxable shall be solely upon the customer. The vendor shall not be required to collect tax from purchasers who furnish a certificate of resale or an exempt organization statement in proper form.

B. That petitioner was furnished with an Exempt Organization Certification issued by the Church to cover exempt sales made to the Order and the Institute. A vendor is not under a duty to investigate or police its customers (RAC Corp. v. Gallman, 39 A.D. 2d 57). That petitioner, however, did investigate the certificate issued and based upon the response it received from the Church, in good faith, accepted the validity of the certificate. Accordingly, petitioner is not liable for the tax it failed to collect on the transactions at issue.

C. That the petition of M. W. Leasing Corp. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use

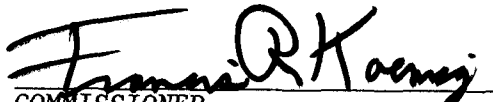
Taxes Due issued July 21, 1980; and that, except as so granted, the petition is in all other respects denied.

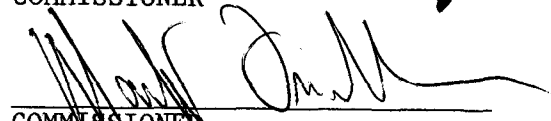
DATED: Albany, New York

APR 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER