

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

May 31, 1983

Parkview Auto Sales, Inc.
Outer Washington St.
Watertown, NY 13601

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
Lawrence Katzman
Williams & Katzman
138 Factory St.
Watertown, NY 13601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Parkview Auto Sales, 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 12/1/76 - 8/31/79. :

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 31st day of May, 1983, he served the within notice of Decision by certified mail upon Parkview Auto Sales, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Parkview Auto Sales, Inc.
Outer Washington St.
Watertown, NY 13601

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
31st day of May, 1983.

David Parchuck

Bruce R. Hagelund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Parkview Auto Sales, 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 12/1/76 - 8/31/79. :

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 31st day of May, 1983, he served the within notice of Decision by certified mail upon Lawrence Katzman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence Katzman
Williams & Katzman
138 Factory St.
Watertown, NY 13601

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
31st day of May, 1983.

David Parchuck

Connie R. 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	:	
	:	
PARKVIEW AUTO SALES, 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 December 1,	:	
1976 through August 31, 1979.	:	

Petitioner, Parkview Auto Sales, Inc., Outer Washington Street, Watertown, New York 13601, 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 December 1, 1976 through August 31, 1979 (File No. 31022).

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 24, 1982, at 9:15 A.M. Petitioner appeared by Lawrence Katzman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

- I. Whether the Audit Division properly disallowed certain sales of motor vehicles reported as nontaxable by petitioner.
- II. Whether petitioner is liable for tax on certain equipment purchases.

FINDINGS OF FACT

1. Petitioner, Parkview Auto Sales, Inc., operated an automobile dealership located at Outer Washington Street, Watertown, New York.
2. On April 18, 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 December 1, 1976 through August 31, 1979 for taxes due of \$2,561.73, plus minimum statutory interest of \$298.37, for a total of \$2,860.10.

3. The audit performed by the Audit Division disclosed additional sales and use taxes due of \$9,640.79. Petitioner executed a consent whereby it agreed to taxes due of \$7,079.06. The unresolved portion of the audit, \$2,561.73, represented disallowed nontaxable sales of \$27,770.00 and equipment purchases of \$10,408.00 subject to use tax.

4. The sales disallowed on audit were the following:

<u>CUSTOMER</u>	<u>AMOUNT</u>
James O'Gorman	\$4,134.00
Gerald Nichter	4,565.00
Gerald Sever	2,330.00
Joseph Blalock	3,250.00
Gene Eaton	4,300.00
Ronald Gates	3,691.00
Douglas Shear	5,500.00

Petitioner submitted exempt organization certificates for the foregoing sales, except for Nichter and Sever. Said certificates, dated August, 1981 and November, 1981, were signed, with the exception of O'Gorman, by the above individuals as either pastor or minister of a church. The church was named as the purchaser in each case.

Petitioner sent certificates to Nichter and Sever to be completed; however, they were returned because of incorrect addresses.

The certificate submitted for O'Gorman, dated November 11, 1981, indicated that he was the purchaser and the exemption number was not completed.

5. James O'Gorman and Gerald Nichter were servicemen stationed at Fort Drum. Both individuals resided off the military reservation and were therefore New York residents. The other sales at issue were to the individual clergymen and not to the exempt organizations.

6. Exemption certificates for the sales at issue were not available for the auditor's examination at the time the audit was conducted.

7. Petitioner conceded that equipment purchases amounting to \$9,148.00 were taxable. The balance, \$1,260.00, was for equipment never received by petitioner, and petitioner was subsequently given appropriate credit by the supplier.

8. Petitioner took the position that its policy was to obtain certificates for all claimed exempt sales at the time of the sale and as such, the certificates referred to in Finding of Fact "4" supra were duplicates of misplaced certificates.

Petitioner argued that the certificates were accepted in good faith and it was not under a duty to police or investigate the certificates.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law provides, in 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 the purchaser, prior to taking delivery, furnishes to the vendor: any affidavit, statement or additional evidence documentary or otherwise, demonstrating that the purchaser is an exempt organization.

That section 1117(a) of the Tax Law provides that receipts from any sale of a motor vehicle shall not be subject to the retail sales tax despite the taking of physical possession within this state, provided the purchaser, at the time of taking delivery:

- (1) is a nonresident of this state,
- (2) has no permanent place of abode in this state,

- (3) is not engaged in carrying on in this state any employment, trade, business or profession in which the motor vehicle will be used in the state, and
- (4) prior to taking delivery, furnishes to the vendor: any affidavit, statement..., which the tax commission may require to assure proper administration of the tax imposed under subdivision (a) of section eleven hundred five.

Subsection (b) provides that a vendor shall not be liable for failure to collect tax on receipts from any sale of a motor vehicle provided that the vendor, prior to making delivery, obtains and keeps available for inspection by the tax commission any affidavit, statement..., as may be required to be furnished under subdivision (a) above.

B. That petitioner failed to establish that prior to making delivery of the automobiles to the customers set forth in Finding of Fact "4" supra that it obtained evidence of exemption as required by sections 1132(c) and 1117(a) of the Tax Law. That, further, the customers were the individual clerygmen, not exempt organizations, and/or individual servicemen who resided off the military reservation and were New York residents for sales tax purposes. Accordingly, petitioner is liable for the tax it failed to collect in accordance with section 1133(a) of the Tax Law.

C. That in accordance with Finding of Fact "7", supra, petitioner is not liable for the use tax on equipment purchased in the amount of \$1,260.00.


D. That the petition of Parkview Auto Sales, 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 April 18, 1980; and that, except as so granted, the petition is in all other respects denied.

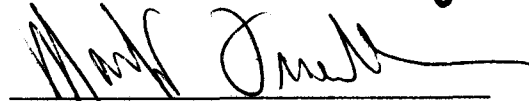
DATED: Albany, New York

MAY 31 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 207 532

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Parkview Auto Sales</i>	
Street and No. <i>Outer Waverly St</i>	
P.O., State and ZIP Code <i>Watertown NY 13601</i>	
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 481 207 533

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Therence Katzman</i>	
Street and No. <i>William & Katzman</i>	
P.O., State and ZIP Code <i>138 Factory St</i>	
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