

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

October 21, 1983

Trailer Rentals, Inc.
644 Coffeen St., Box 381
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
Anderson Wise
145 Clinton St., P.O. Box 704
Watertown, NY 13601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Trailer Rentals, 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 3/1/77-8/31/79.

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 21st day of October, 1983, she served the within notice of Decision by certified mail upon Trailer Rentals, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Trailer Rentals, Inc.
644 Coffeen St., Box 381
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
21st day of October, 1983.

Connie A Hagelund

Patricia Kupcheni

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Trailer Rentals, 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 3/1/77-8/31/79. :

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 21st day of October, 1983, she served the within notice of Decision by certified mail upon Anderson Wise the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anderson Wise
145 Clinton St., P.O. Box 704
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
21st day of October, 1983.

Connie Hagelund

Patricia Kupcheni

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
TRAILER RENTALS, 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, 1977	:	
through August 31, 1979.	:	

Petitioner, Trailer Rentals, Inc., Box 381, 644 Coffeen 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 March 1, 1977 through August 31, 1979 (File No. 31555).

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 10:45 A.M. Petitioner appeared by Anderson Wise, Esq. The Audit Division appeared by John P. Dugan, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Whether maintenance services performed by employees of petitioner corporation for Lawrence E. Smith are subject to tax.

FINDINGS OF FACT

1. Petitioner, Trailer Rentals, Inc., operated a mobile home park in Watertown, New York. Lawrence E. Smith was the majority stockholder, a director and officer of said corporation. Mr. Smith, individually, owned the property adjacent to the mobile home park.

2. On May 14, 1976, petitioner and Lawrence E. Smith entered into an agreement for the hiring of employees to work on property owned by each. The agreement contained the following provisions:

1. Resolved that Trailer Rentals and Lawrence E. Smith individually act as one in the hiring of employees. Together they will act as one employer.
2. Each will be responsible for their share of wages, FICA, compensation insurance and other expenses based on hours of employment.
3. Each will contribute their share, based on each monthly billing or seasonal billing (hours worked for each). However, advances will be made on account.
4. The basis of the billing will be the cost of compensation insurance as to which will handle the accounting and payments. Which ever can obtain the lowest rate.
5. The term of employment will be from April or May to December of each calendar year.
6. All employees will be temporary - based on work available.

This arrangement was established because neither petitioner nor Mr. Smith, separately, had sufficient work to keep maintenance personnel employed on a full time basis.

3. Maintenance services for the mobile home park were performed by employees of petitioner. The same personnel performed maintenance services on the property owned by Mr. Smith. These personnel were carried on the books and records of petitioner for payroll taxes, unemployment insurance and the like. Petitioner kept records of the actual hours the maintenance personnel worked for each. Petitioner paid the wages of the employees and billed Mr. Smith in proportion to the number of hours worked for him.

4. On audit, the Audit Division determined that the charge between petitioner and Lawrence E. Smith constituted sales of services subject to the tax imposed

under section 1105(c)(5) of the Tax Law and held petitioner liable for the taxes due thereon of \$1,022.14. The audit also disclosed use taxes due of \$183.33. Petitioner is not disputing the use taxes and has made payment thereof.

5. On April 18, 1980, as the result of the foregoing 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, 1977 through August 31, 1979 for taxes due of \$1,205.47, plus interest of \$191.12, for a total of \$1,396.59.

On September 30, 1980, the Audit Division adjusted the tax on said notice to \$1,006.56, the amount at issue herein.

6. Petitioner argued that itself and Lawrence E. Smith were co-employers of the same personnel and that the charges to Mr. Smith for services were his share of employees' wages which are exempt from tax under section 1105(c)(5) of the Tax Law.

CONCLUSIONS OF LAW

A. That an employer-employee relationship did not exist between Lawrence E. Smith and the individuals performing maintenance services; that said personnel were employed by and their wages paid by petitioner corporation, a separate and distinct business entity.

That the charges made by petitioner to Lawrence E. Smith constituted a sale of services within the meaning and intent of section 1105(c)(5) of the Tax Law and were thus subject to sales tax. (Matter of 107 Delaware Associates, State Tax Commission, March 6, 1981. Matter of Central Markets, Inc., State Tax Commission, April 9, 1982. Matter of Locy Development, Inc., State Tax Commission, May 6, 1983.)

B. That the petition of Trailer Rentals, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 18, 1980 is sustained.

DATED: Albany, New York

OCT 21 1983

STATE TAX COMMISSION

Roderick W. Cline
PRESIDENT

Francis R. Kolmg
COMMISSIONER

[Signature]
COMMISSIONER

P 481 208 428

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
TRAILER RENTALS, INC.	
Street and No.	
644 COFFEEN ST., BOX 381	
P.O., State and ZIP Code	
WATERTOWN, NY 13601	
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 481 208 429

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
ANDERSON-WISE	
Street and No.	
145 CLINTON ST., P.O. BOX 4	
P.O., State and ZIP Code	
WATERTOWN, NY 13601	
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