

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hi Fi Shop, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/79-2/28/82. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Hi Fi Shop, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hi Fi Shop, Inc.
c/o J. A. Leo Beaudet, Pres.
88 Parker Ave. & St. Regis Blvd.
Massena, NY 13662

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 December, 1984.

David Parchuck

Nicola J. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

WANT TO STAY

VOI681400 ZAT RTA/2

THE UNIVERSITY OF CHICAGO

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1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 26

For identification of a subject who has been identified as a participant in a Department or Office of State Police investigation, please call 98-6700 or 98-6701.

Dated May 25, 1964

1. Don't write to solve

10-10-68

in following:
 1. enclosing a letter copy received in a confidentially sealed postpaid wrapper, all signed
 certified mail upon 25th ship, last. The letter, however, in the letter is signed by
 that day of December, 1984, he signed the letter, well as all enclosed by
 of the State Tax Commissioner, that in a letter of January 25, 1985, the letter is signed by
 David L. Berman, being that letter, however, and also that in a letter of January 25, 1985, the letter is signed by

[illegible]

1. The proposed plan for the proposed plan is to be approved by the Board of Directors of the Corporation. The Board of Directors shall have the authority to approve or disapprove the plan, and to make such amendments as it may deem necessary. The Board of Directors shall also have the authority to make such other provisions as it may deem necessary for the proper carrying out of the plan.

10-11-64

side are noted as above
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subsequent to the termination of the contract, the Government shall be liable for the cost of the contract.

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

December 31, 1984

Hi Fi Shop, Inc.
c/o J. A. Leo Beaudet, Pres.
88 Parker Ave. & St. Regis Blvd.
Massena, NY 13662

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HI FI SHOP, 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 June 1, 1979	:	
through February 28, 1982.	:	

Petitioner, Hi Fi Shop, Inc., 88 Parker Avenue and St. Regis Boulevard, Massena, New York 13662, 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, 1979 through February 28, 1982 (File No. 40596).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Room 704, Utica, New York, on June 14, 1984 at 10:45 A.M. Petitioner appeared by J.A. Leo Beaudet, President. The Audit Division appeared by John P. Dugan, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioner is subject to compensating use tax on the rental of certain vehicles and office equipment.

FINDINGS OF FACT

1. The Audit Division, on August 20, 1982, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (hereinafter "Notice") to petitioner, Hi Fi Shop, Inc. Said Notice was for the period June 1, 1979 through February 28, 1982 and additional tax due was assessed at \$1,196.16, plus interest of \$214.93, for a total due of \$1,411.09.

2. The aforementioned Notice was based on a field audit of petitioner's books and records. Said audit revealed that petitioner leased from Beaudet Realty certain vehicles and office equipment and that no sales tax was charged by Beaudet Realty on the monthly rental fees. It was also found that Hi Fi Shop, Inc. did not pay any use tax on said monthly rental charges. The Audit Division examined rental payments made by petitioner to Beaudet Realty in detail and determined that taxable rental charges during the audit period amounted to \$17,088.00. Additional tax due of \$1,196.16 was computed by multiplying alleged taxable rental charges of \$17,088.00 by the 7 percent tax rate.

3. J. A. Leo Beaudet was president and owner of Hi Fi Shop, Inc. He was also the owner of Beaudet Realty, a sole proprietorship doing business under the firm name and style of Beaudet Realty.

4. Beaudet Realty was established sometime in June, 1976 for the sole purpose of purchasing equipment and leasing it to Hi Fi Shop, Inc. Mr. Beaudet testified that Beaudet Realty was formed to help alleviate the cash flow problem of Hi Fi Shop, Inc. All equipment purchased by Beaudet Realty was leased exclusively to Hi Fi Shop, Inc. Petitioner leased the vehicles and office equipment from Beaudet Realty pursuant to written leases which were renewed on a year-to-year basis. Monthly lease payments were made by petitioner to Beaudet Realty for the rental of the vehicles and office equipment.

5. Hi Fi Shop, Inc. and Beaudet Realty were separate and distinct entities. Separate books and records were maintained and separate tax returns were filed.

6. Beaudet Realty paid sales tax on the purchase price of the equipment which it leased to petitioner. Petitioner maintains that it should be given credit for the sales tax paid by Beaudet Realty on the purchase of the leased

equipment since said equipment was purchased by Beaudet Realty exclusively for resale and was, therefore, not subject to tax to Beaudet Realty. The Audit Division maintains that petitioner and Beaudet Realty were separate entities for sales tax purposes and that any refund which might be due Beaudet Realty must be claimed by Beaudet Realty in a claim for refund. During the course of the audit, Mr. Beaudet was advised by the auditor to have Beaudet Realty file a claim for refund for sales tax paid by Beaudet Realty on equipment which it leased to Hi Fi Shop, Inc.

7. Petitioner does not dispute that its rental of the vehicles and equipment constituted a taxable transaction. However, Mr. Beaudet asserts that the Notice dated August 20, 1982 should be cancelled since his erroneous payment of sales tax on the initial purchase of the equipment and vehicles through Beaudet Realty is equal to or slightly greater than the tax due on the monthly rental charges to Hi Fi Shop, Inc.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax upon "[t]he receipts from every retail sale of tangible personal property...". Section 1110(A) of the Tax Law imposes a use tax on the use within this state of any tangible personal property purchased at retail on which no sales tax was paid.

B. That petitioner's lease of certain office equipment and vehicles from Beaudet Realty constituted a retail sale pursuant to Tax Law section 1105(a). Since no sales tax was charged by Beaudet Realty on the rental charges to petitioner, the Audit Division properly assessed a compensating use tax against petitioner for its use of said office equipment and vehicles within New York.

C. That it is immaterial that Beaudet Realty may have erroneously paid sales tax on its purchase of the office equipment and vehicles in question.

Beaudet Realty is not a party to this proceeding. Any refund to which Beaudet Realty may be entitled must be pursued apart from the instant matter. Petitioner and Beaudet Realty are separate "persons" as that term is defined in section 1101(a) of the Tax Law.

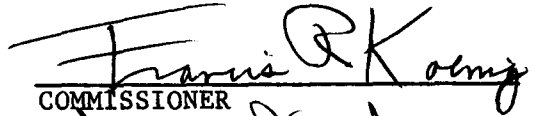
D. That the petition of Hi Fi Shop, Inc. is denied in its entirety; and that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated August 20, 1982 is sustained.

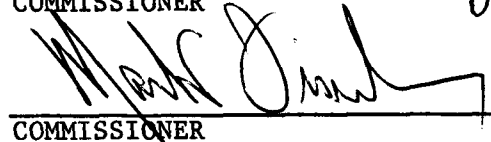
DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 470 316 335

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Mr. J. H. Staudet, Pres</i>	
Street and No. <i>28 Park Ave St Regis Rd</i>	
P.O., State and ZIP Code <i>Marietta NY 13662</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	\$

PS Form 3800, Feb. 1982

Postmark or Date