

## STATE TAX COMMISSION

AFFIDAVIT OF MAILING

**SS. :**

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 6th day of April, 1984, he served the within notice of Decision by certified mail upon Maurice Lane, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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.

David Parluck

Carmin C. Delgado  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

*James A. Hargrave*  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

April 6, 1984

Maurice Lane, Inc.  
P.O. Box 178  
Boiceville, NY 12412

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) 1090 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: Petitioner's Representative  
Harry Pelio  
Pelio & Pelio  
11 Furler St.  
Totowa, NJ 07512  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MAURICE LANE, 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, 1976	:	
through May 31, 1979.	:	

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Petitioner, Maurice Lane, Inc., P.O. Box 178, Boiceville, New York 12412, filed a petition for a 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 May 31, 1979 (File No. 29413).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 1, 1983 at 1:15 P.M., with all briefs to be submitted by April 15, 1983. Petitioner appeared by Harry Pelio, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division correctly determined additional taxes due from petitioner by disallowing a portion of the sales which petitioner considered as nontaxable.

FINDINGS OF FACT

1. Petitioner, Maurice Lane, Inc., operated a sawmill in Boiceville, New York.
2. On August 28, 1979 and December 10, 1979, petitioner executed consents extending the period of limitation for assessment of sales and use taxes under

Articles 28 and 29 of the Tax Law for the period June 1, 1976 through May 31, 1979 to March 20, 1980.

3. On January 2, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for \$101,395.00 in tax plus \$43,145.38 in penalty and interest for the period June 1, 1976 through May 31, 1979.

4. Petitioner timely filed a petition for a hearing to review the aforementioned notice.

5. The Audit Division issued the notice of January 2, 1980 on the basis that petitioner failed to submit its records for audit. The Division reviewed the sales and use tax returns which petitioner had filed and reduced the reported gross sales by the reported taxable sales to arrive at petitioner's alleged nontaxable sales. All said nontaxable sales were disallowed and tax was determined to be due in the amount of \$101,395.00.

6. As a result of a pre-hearing conference, petitioner agreed to a test period audit. The test of one year's nontaxable sales had to be shortened due to the incomplete records of the petitioner. The Audit Division reviewed the nontaxable sales recorded by petitioner for the months of October, November and December 1977 and determined that \$67,288.25 of said sales were not supported by exemption certificates. The \$67,288.25 was divided by the recorded nontaxable sales of \$117,322.00 to arrive at an error rate of 57.4 per cent. This was applied to the alleged nontaxable sales over the audit period to arrive at \$58,179.83 in additional tax due, which is the amount at issue.

7. Petitioner, following the Audit Division's test, submitted a Resale Certificate certified by Jenkins Enterprises, a Resale Certificate certified by Van Der Stad Sawmill Co., and an Exempt Use Certificate certified by the

Celotex Corporation, a letter from Eastern States Lumber Company, Inc. indicating its vendor identification number and those of A.H. Weaver Lumber Co. and Timber Tracts and a Farmer's Exemption Certificate certified by Wilfred Hitchcock.

8. The Resale Certificate of Jenkins Enterprises was rejected by the Audit Division on the grounds that a trucking company could not issue a Resale Certificate. The Resale Certificate of Van Der Stad Sawmill Co. was rejected since the certificate itself was a New Jersey form rather than the form prescribed by New York State. The Exempt Use Certificate of Celotex Corporation was rejected because no sale was made to that corporation in the test period. The letter of Eastern States Lumber Company, Inc. was rejected on the grounds that a certificate is required in order to exempt a sale. The Farmer's Exemption Certificate of Wilfred Hitchcock was rejected on the grounds that the certificate specifically provided that it could not be used for the purchase of building materials.

9. Petitioner failed to present any additional documentation to support the nontaxable sales that were shown in its records.

10. Petitioner offered no evidence to establish that its failure to pay over the taxes at issue was due to reasonable cause.

#### CONCLUSIONS OF LAW

A. That under section 1132(c) of the Tax Law all receipts from the sale of property are subject to tax until the contrary is established. The burden of proving that any receipt is not taxable is upon the person required to collect tax unless, he has "taken from the purchaser a certificate in such form as the tax commission may prescribe, signed by the purchaser and setting forth his name and address and, except as otherwise provided by regulation of the tax commission, the number of his registration certificate...".


B. That on audit the Audit Division disallowed only those sales for which petitioner failed to produce an exemption certificate. The Division's determination of tax due on those sales was therefore correct pursuant to section 1132(c). The Division did, however, err in not allowing the Resale Certificate later furnished by Jenkins Enterprises and the Farmer's Exemption Certificate furnished by Wilfred Hitchcock in that a vendor who obtains valid certificates from customers in good faith is insulated from sales tax liability (Saf-Tee Plumbing Corp. v. Tully 77 A.D.2d 1; 432 N.Y.S.2d 409).

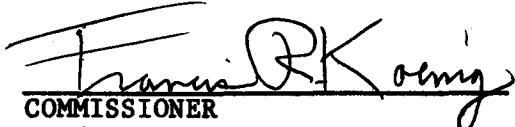
C. That the petition of Maurice Lane, Inc. is granted to the extent indicated in Conclusion of Law "B" above; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on January 2, 1980 and as adjusted as the result of the pre-hearing conference (Finding of Fact "6"); that, except as so granted, the petition is in all other respects denied.

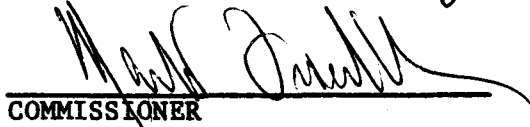
DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 440 976 814

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Maurice Lane, Inc.</i>	
Street and No. <i>P.O. Box 178</i>	
P.O., State and ZIP Code <i>Boiceville, NY 12412</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 440 976 815

RECEIPT FOR CERTIFIED MAIL

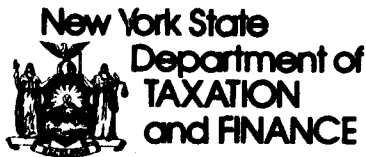
NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Narry Pelio</i>	
Street and No. <i>11 Fuller St.</i>	
P.O., State and ZIP Code <i>Totowa, NJ 07512</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





# MEMORANDUM

AD-53 (1/80)


**TO:** Paul B. Coburn, Secretary to the State Tax Comm. **OFFICE:** Bureau of Law  
**FROM:** John P. Dugan, Deputy Commissioner and Counsel **DATE:** May 7, 1984  
**SUBJECT:** Maurice Lane, Inc.

On April 6, 1984 the State Tax Commission issued a decision regarding Maurice Lane, Inc. in which the petition was partially granted but in all other respects denied.

At the hearing in this matter the petitioner was given until March 15, 1983 to submit exemption certificates and the Department's attorney was given until April 15, 1983 for any comments he wished to make. The hearing officer further instructed that those comments should also be forwarded to the taxpayer's representative.

On March 18, 1983, after review of the exemption certificates by the auditor, who was also the Department's witness in this matter, Mr. Scopellito, the Department's representative, wrote to the hearing officer and advised that the Notice of Determination and Demand was to be cancelled in full. The concluding paragraph of that memorandum provided, "It would appear that based on this memorandum, which is a stipulation on the part of the Audit Division, the Petition should be granted in favor of the Petitioner."

Accordingly, it is recommended that the Commission withdraw its April 6, 1984 decision.

  
Deputy Commissioner and Counsel

MA/jg  
Enc. (Tax Appeals Bureau file, correspondence)

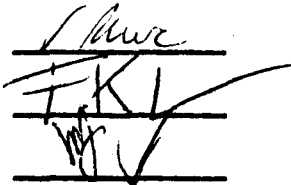
WITHDRAW

DO NOT WITHDRAW

Commissioner Chu

Commissioner Koenig

Commissioner Friedlander

Handwritten initials and signatures, including "L. Koenig" and "FKL", over horizontal lines.

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