

STATE TAX COMMISSION

David P. Hays
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mendon Leasing Corporation : 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 12/1/77 - 11/30/80. :

State of New York }
County of Albany } 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 5th day of October, 1984, he served the within notice of Decision by certified mail upon Mendon Leasing Corporation the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mendon Leasing Corporation
c/o John J. Oliveri, V.P.
362 Kingsland Ave.
Brooklyn, NY 11222

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
5th day of October, 1984.

David Parchuck

Quinn P. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Mendon Leasing Corporation
c/o John J. Oliveri, V.P.
362 Kingsland Ave.
Brooklyn, NY 11222

Dear Sir:

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: Petitioner's Representative
Stuart B. Stillman
Stillman, Herz & Austin
300 Garden City, Plaza Suite 538
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MENDON LEASING CORPORATION	:	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, 1977	:	
through November 30, 1980.	:	

Petitioner, Mendon Leasing Corporation, 362 Kingsland Avenue, Brooklyn, New York 11222, 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, 1977 through November 30, 1980 (File No. 35022).

A formal hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 14, 1983 at 1:20 P.M., with all briefs to be submitted by March 9, 1984. Petitioners appeared by Stillman, Herz & Austin (Stuart B. Stillman, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel).

ISSUES

I. Whether petitioner is responsible for the sales tax determined due by the Audit Division on the sales of motor vehicles from its rental fleet.

II. Whether section 1132(f) of the Tax Law relieves petitioner from the liability to collect sales tax.

FINDINGS OF FACT

1. Petitioner, Mendon Leasing Corp., operates a motor vehicle leasing business. Petitioner is a registered sales tax vendor and filed the quarterly

New York State and local sales and use tax returns for the period December 1, 1977 through November 30, 1980.

2. By its vice president, petitioner executed a consent extending the period for assessment of sales and use taxes for the period December 1, 1977 through November 30, 1980 to September 20, 1981.

3. On May 20, 1981, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner assessing a tax due of \$43,544.24 plus interest for the period December 1, 1977 through November 30, 1980.

4. On audit, the Audit Division found that petitioner had failed to collect sales tax on the sale of trucks and automobiles from its rental fleet. The division's auditor determined that approximately 370 motor vehicles were sold and that some 150 thereof had been sold either for resale or to an out-of-state resident. The total disallowed vehicle sales computed by the auditor was \$544,303.00 which consisted of \$490,367.00 in sales from petitioner's ledger account no. 950 (sale of fixed assets account) and \$53,936.00 in sales from ledger account no. 142 (fixed assets - service autos account). The auditor deemed all sales taxable at the combined 8 percent New York State and New York City tax rate which resulted in a tax due of \$43,544.24.

5. Petitioner maintained that pursuant to section 1132(f) of the Tax Law, a motor vehicle cannot be registered with the New York State Department of Motor Vehicles until it is first proven that the applicable tax has been paid. Therefore, the collection from it of any sales or use tax results in a double payment of the tax.

6. (a) Petitioner argued that any tax due on the sale of vehicles from its vehicle fleet would not approach the figure that the Audit Division

determined and that an estimated 20 percent of the purchasers were residents of Nassau County or Suffolk County where the combined tax rate was 7 percent as opposed to the 8 percent tax rate used by the Audit Division.

(b) At the hearing, petitioner introduced into evidence its own audit on fleet vehicle sales. According to petitioner's controller, this audit commenced with the listing of every vehicle sale, the proceeds of which would have been posted only to account no. 950. Each vehicle sale was then analyzed to determine whether the Audit Division had "allowed" or "disallowed" the sale. The "disallowed" sales were further scrutinized to see if there was a basis for a sales tax exemption such as the purchase of a vehicle by a motor vehicle dealer for resale, the payment of an insurance claim by an insurance carrier for the loss of a vehicle, or the purchase of a vehicle by an out-of-state resident. For the remaining "disallowed" sales, a letter-of-inquiry was sent to the purchaser to verify whether he paid the tax when he registered the vehicle with the Department of Motor Vehicles. The results of this audit were as follows:

Vehicle sales	\$1,322,726.61
Allowed sales	- 836,442.20
Disallowed sales	<u>\$ 486,284.41</u>
Exempt sales in disallowed sales:	
Insurance proceeds or resale sales	\$ 77,365.31
Out-of-State purchasers	+ 64,219.00
Total Exempt Sales	<u>\$ 141,584.31</u>
Other subtractions:	
Purchaser submitted sales tax receipts	\$ 45,083.07
Purchaser verified sales tax paid - no receipts	+ 39,254.00
Total Other Subtractions	<u>\$ 84,337.07</u>
Net Difference	\$ 260,363.03

Petitioner asserted that its efforts to secure verification of payment of the tax were hampered by the fact that the majority of the purchasers were businesses

and that many of these businesses are bankrupt or no longer in existence. No similar listing of vehicle sales posted to account no. 142 was introduced into evidence by petitioner.

7. Petitioner, to support the various claims made, submitted many documents including cancelled checks, bills-of-sale, tax receipts and signed statements. One check shows that an insurance carrier reimbursed petitioner for the theft of a 1977 Oldsmobile valued at \$4,930.00. Several other checks and tax receipts of customers show that said customers paid the tax at the time of registration on vehicles valued at \$39,083.07.¹ The remaining documents fail to prove the contentions of the petitioner; that an insurance company paid for a loss, that the purchaser acquired the vehicle for resale, that the purchaser was not a resident of New York City or that the purchaser paid the tax directly to the state.

8. The Audit Division conceded that the tax assessed against petitioner should be reduced by \$1,925.00 based on tax receipts which were secured as the result of a pre-hearing conference.

9. After the hearing, petitioner contacted the Department of Motor Vehicles to determine if any of the vehicles sold had been registered in New York State. Upon receipt of this response, petitioner requested the Audit Division to search the Tax Department records on vehicle registrations to determine what the records showed with respect to sales tax paid on each vehicle registered. The records sought, Receipts for Payment of Sales Tax on a Casual Sale of a Motor Vehicle, were, however, no longer available having been destroyed according to statute after being retained for a three year period.

¹ Petitioner claimed that purchasers furnished sales tax receipts on vehicles sold for \$45,083.07. However, no receipt was offered into evidence to support the claim that Radal Bar & Restaurant paid tax on a vehicle purchased by it for \$6,000.00.

CONCLUSIONS OF LAW

A. That every person required to collect the tax shall collect the tax from the customer when collecting the price to which it applies [Section 1132(a) of the Tax Law]. It shall be presumed that all receipts for tangible personal property 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, unless the vendor shall have taken from the purchaser a certificate to the effect that the property was for resale or for some reason exempt from tax [Section 1132(c) of the Tax Law]. Furthermore, the receipts from a sale of a motor vehicle shall not be subject to the retail sales tax, despite the taking of physical possession by the purchaser within the State and a local taxing jurisdiction, provided that the purchaser, prior to taking delivery, furnishes to the vendor an affidavit that he is a nonresident, has no permanent place of abode in the State or local taxing jurisdiction and is not engaged in carrying on in the State or local taxing jurisdiction any employment, trade business or profession in which the motor vehicle will be used [Sections 1117(a) and 1214(a) of the Tax Law].

B. That since petitioner, Mendon Leasing Corporation, was a person required to collect the tax and did not receive from the purchasers resale certificates or nonresident affidavits, it was under a duty to collect the New York State and New York City sales tax on its sales of vehicles from the rental fleet. The fact that section 1132(f) of the Tax Law provides that a purchaser may not register a vehicle in New York until it is proven that the sales tax was paid, does not relieve petitioner of its duty and responsibility to collect the tax from said purchaser. (Matter of the Boat Place, Inc. State Tax Commission, November 20, 1981).

C. That the tax assessment issued against petitioner, Mendon Leasing Corporation, is reduced by \$5,446.04 due to petitioner's offering of proof as provided for in Finding of Fact "7" and the concession by the Audit Division as provided in Finding of Fact "8". Petitioner, in all other respects, has failed to meet its burden of proof.

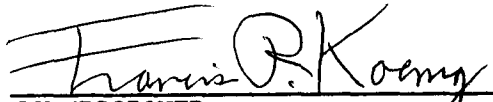
D. That the petition of Mendon Leasing Corporation is granted to extent of Conclusion of Law "C" above, the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 20, 1981 and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 05 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 168 820

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517 PS Form 3800, Feb. 1982	Sent to	Mendon Leasing Corp.
	Street and No.	40 John J. Oliveri, V.P.
	P.O., State and ZIP Code	362 Kingsland Ave.
	Postage	Brooklyn, NY 11222
	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		

P 693 168 821

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517 PS Form 3800, Feb. 1982	Sent to	Stuart B. Stillman
	Street and No.	510 7th Ave.
	P.O., State and ZIP Code	300 Garden City, Plaza
	Postage	Plaza Suite 538
	Certified Fee	Garden City, NY 11530
	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		