

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
South Camp Recreational Vehicles, Inc. :
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 6/1/78 - 11/30/80. :
_____ :

AFFIDAVIT OF MAILING

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 South Camp Recreational Vehicles, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

South Camp Recreational Vehicles, Inc.
ATTN: Richard Recckio
S-5026 Southwestern Blvd.
Hamburg, NY 14075

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

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DATE: 30 JUL 1966

arranged to contribute to a conference about

2017 and 2018 is limited to 10,000 units and 20,000 units, respectively.

THEY WERE NOT THE ONLY ONES TO BE REBORN.

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1948-1949

 Springer

CONFIDENTIAL

David Friedman, Chief of the Department of Health and Human Services, has been named as the new director of the National Commission on the Causes and Prevention of Violence.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 01-18-01 BY 60322 UCBAW

you notified the nation and the government of 1981. Continued to you 1981

is available; and the resulting loss of power is not a significant factor.

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1. What is the purpose of the study?

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Subject: _____

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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of the State Tax Commission

Comptroller of the State

for the determination of a petition for a writ of habeas corpus under Article 32 of the New York Constitution, dated 1938 - 1939.

State of New York

and

County of Albany

David Rosenberg, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is now 37 years of age, and that on the 21st day of December, 1938, he received the following notice of his appointment as a member of the State Tax Commission, which was signed by the Comptroller of the State:

Walter E. Smith
205 Hudson St.
Hempstead, NY 11011

and by depositing same envelope in a postpaid envelope addressed to the State Tax Commission, New York City, and enclosing the same in the State Tax Commission envelope within the State of New York.

That respondent further says that the address of the respondent at the time of the petitioner's appointment was the same as the address of the respondent at the time of the respondent's appointment.

Sworn to before me and
Tested and signed on the 21st day of December, 1938.

Authorized to administer oaths
 pursuant to Tax Law Section 174

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

December 31, 1984

South Camp Recreational Vehicles, Inc.
ATTN: Richard Recckio
S-5026 Southwestern Blvd.
Hamburg, NY 14075

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: Petitioner's Representative
Walter L. Rooth
296 Buffalo St.
Hamburg, NY 14075
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	DECISION
	:	
SOUTH CAMP RECREATIONAL VEHICLES, INC.	:	
	:	
for Revision of a Determination or for Refund	:	
of Sales & Use Taxes under Articles 28 & 29	:	
of the Tax Law for the Period June 1, 1978	:	
through November 30, 1980.	:	

Petitioner, South Camp Recreational Vehicles, Inc., Attn: Richard Recckio, S-5026 Southwestern Boulevard, Hamburg, New York 14075, 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, 1978 through November 30, 1980 (File No. 36904).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on May 21, 1984 at 1:15 p.m., with all briefs to be submitted by July 16, 1984. Petitioner appeared by Walter L. Rooth, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether the results of a field audit of petitioner's business operations, which determined additional sales and use taxes to be due from petitioner, should be sustained.

FINDINGS OF FACT

1. On December 14, 1981, following a field audit, the Audit Division issued to petitioner, South Camp Recreational Vehicles ("South Camp"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the quarterly periods spanning June 1, 1978 through November 30, 1980, assessing

additional sales and use taxes due in the aggregate amount of \$74,605.29, plus penalty and interest. South Camp, by its vice-president Richard Recckio, had previously executed a consent allowing the assessment of sales and use taxes for the instant audit period to be made at any time on or before December 20, 1981.¹

2. South Camp is a corporation engaged in the business of selling recreational vehicles including vans and motor homes, performing van conversions and providing repair and maintenance services (including parts and accessories) for recreational vehicles.

3. In or about February of 1981, the Audit Division commenced a field audit of petitioner's business operations. The auditor examined the three main areas of petitioner's business, specifically its service department ("Service"), van shop department ("Van Shop"), and recreational vehicles sales department ("R.V. Sales") in detail. For the Service and Van Shop departments, the auditor utilized petitioner's existing available books and records and, for gaps when such records were incomplete or nonexistent, based projections upon South Camp's existing books and records. For the R.V. Sales Department, there was no general ledger, nor any cash receipts journal or sales journal, and the auditor analyzed existing sales invoices and bank deposits to the R.V. Sales Department's bank accounts in performing the audit.

4. The audit methods and results are more specifically detailed as follows:

a) SALES TAX ASSESSED:

<u>AREA/DEPARTMENT</u>	<u>AUDITED TAX DUE</u>	<u>EXPLANATION</u>
Service	\$752.89	There were no sales journals for January and February 1980; detailed

¹ The assessment of \$74,605.29 is comprised of a.) \$72,152.99 of additional sales tax due and b.) \$2,452.80 of additional use tax due.

<u>AREA/DEPARTMENT</u>	<u>AUDITED TAX DUE</u>	<u>EXPLANATION</u>
		examination of all other months resulted in finding additional unsubstantiated exempt sales of \$10,444.13, which when divided by total service sales for the months examined (\$683,328.30) resulted in an error rate of 1.528% and, by projection against total service sales (\$703,845.65), resulted in additional taxable sales of \$10,755.52 and additional tax due of \$752.89.
Van Shop	\$3,170.02	All sales journals were available; detailed examination revealed unsubstantiated exempt sales of \$45,474.36 ² with additional tax due of \$3,170.02.
Undercollected Tax	\$ 245.36	A sample of tax collected per Service and Van Shop records revealed undercollection of \$26.89, which when divided by total tax collected (\$7,168.12; per sample) resulted in an error rate of .375 percent and, by projection against tax collected over the entire audit period by Service and Van Shop (\$65,427.31) resulted in additional tax due of \$245.36.
R.V. Sales	\$126,197.07	There was no general ledger, nor any cash receipts journal or sales journal maintained for R.V. Sales; thus bank deposits to the sales account(s) used exclusively for R.V. Sales were totalled (\$1,878,910.59) and compared to total available R.V. Sales invoices (\$974,202.61). ³ Exempt sales invoices totalling \$39,500.00 were divided by total sales invoices (\$974,202.61), yielding an exempt sales percentage of 4.05 percent, which when applied to total deposits (\$1,878,910.59) resulted in exempt R.V. Sales of \$76,095.86.

² \$439.95 out of \$45,474.36 was taxed at 4 percent rather than 7 percent.

³ The R.V. Sales account was maintained at Manufacturers and Traders Trust Co. ("M & T Bank"). During the middle of the audit period the original M & T Bank account for R.V. Sales was closed and a new account, also at M & T bank was opened in its place, using the carried forward balance.

<u>AREA/DEPARTMENT</u>	<u>AUDITED TAX DUE</u>	<u>EXPLANATION</u>
		Exempt R.V. Sales were then subtracted from total deposits to arrive at taxable R.V. Sales receipts of \$1,802,814.73, with additional tax due of \$126,197.07.

The above audited additional tax due, totalling \$195,792.65, was reduced by tax paid by petitioner to arrive at assessed additional sales tax due of \$72,152.99.

b) USE TAX ASSESSED:

<u>AREA/DEPARTMENT</u>	<u>AUDITED TAX DUE</u>	<u>EXPLANATION</u>
Recurring Purchases	\$426.25	A detailed analysis of all available cash disbursements journals from Service (3/79 through 9/80) and R.V. Sales (3/79 through 2/80), resulted in additional tax due on recurring purchases of \$173.33 by Service and \$4.34 by R.V. Sales, respectively. These respective amounts were compared to total disbursements per journals from Service (\$69,363.53) and R.V. Sales (\$36,978.21) to arrive at respective error rates of .25 percent and .01 percent. These error rates were combined and applied against total combined disbursements from Service and R.V. Sales to arrive at additional tax due of \$426.25.
Assets	\$2,026.05	Asset purchases were traced from Federal income tax depreciation schedules and South Camp's general ledgers to invoices for the entire audit period, with additional tax found due in the amount of \$2,026.05.

5. The bank deposits analysis, carried out in conjunction with available source documents (R.V. Sales invoices), was used only in the area of R.V. Sales, and only because of the lack of any general ledger, cash receipts journal or sales receipts journals in this area. In all other instances, the audit results were based on projections from a detailed examination of those

receipts and disbursements journals and other existing records made available to the auditor by South Camp.

6. South Camp employed one accountant during the audit period who, together with his wife, maintained South Camp's books and records. South Camp does not assert that its books and records were complete, but rather maintains that there existed additional exempt sales for which credit was not allowed, that high gasoline prices and interest rates during the audit period resulted in a slow selling volume for recreational vehicles, and that deposits to the R.V. Sales bank account which exceeded total R.V. Sales invoices and were treated by the auditor as subject to sales tax consisted of transfers from other bank accounts into the R.V. sales account and of proceeds from loans.

7. According to testimony by South Camp's vice-president, Richard Recckio, checks were regularly written and deposited from accounts maintained for the other areas of South Camp's business (e.g. Van Shop), which had money, into the R.V. Sales account when the latter needed cash to meet expenses. Mr. Recckio also testified that if a recreational vehicle purchaser financed his purchase through a bank other than M & T Bank (where the R.V. Sales account was maintained), but at a bank such as Liberty National Bank and Trust Company ("Liberty Bank") where South Camp maintained an account, the receipts from such sale were deposited directly into the latter (e.g. Liberty Bank) bank account.⁴ Mr. Recckio testified with regard to such R.V. Sales receipts that "[w]e would mix them up. We didn't keep them separate. The reason for that, if someone bought a motor home, if that is the case, and the customer financed through Liberty Bank, and that sales contract, this bank draft was a loan; we deposited at

⁴ Mr. Recckio alluded to South Camp maintaining as many as eight bank accounts, although no banks and/or accounts other than M & T Bank and Liberty Bank were mentioned.

Liberty, not M & T." He also testified that "approximately ninety percent of the time", such funds were thereafter transferred to the R.V. Sales account at M & T Bank from which South Camp would pay its supplier for the vehicle sold.

8. Mr. Recckio testified that South Camp borrowed money from quite a few banks, from Recckio's Lanes (a bowling business operated by Joseph Recckio, who was South Camp's president) and from Joseph Recckio, personally, during the audit period. Richard Recckio testified that he didn't know the exact amounts borrowed from any of these sources over the audit period, but estimated that Recckio's Lanes loaned approximately \$20,000.00 per year to South Camp, "mostly during the wintertime", and noted that Joseph Recckio contributed or loaned certain rents he received from apartments he owned.

9. Richard Recckio testified that there were more exempt out-of-state R.V. sales than the two such sales the auditor allowed as substantiated, but that South Camp didn't collect tax or take affidavits or other substantiation regarding such sales from the purchasers because "it was believed that the purchaser had to pay the tax when the vehicle was registered out of state." South Camp was granted a period of time after the hearing (until July 16, 1984) to submit sales invoices and/or purchaser's affidavits in support of additional out-of-state sales exceeding the two out-of-state sales substantiated on audit. No such additional items were submitted. Mr. Recckio estimated that approximately "fifteen percent and possibly more" of South Camp's R.V. Sales were out-of-state sales. Petitioner asserts that the same problem with out-of-state sales led to an assessment on a prior audit, but that South Camp was never advised during such audit or thereafter of the proper method of recordkeeping regarding out-of-state sales.

10. Mr. Recckio testified that business was slow during the audit period and that South Camp did not have \$1,878,910.59 in R.V. Sales. He testified that this figure was approximately "four times" too high for R.V. Sales during the audit period and, regarding such figure, that "[m]aybe (such figure of \$1,878,910.59 would represent) a combination of all three departments. I don't have inside figures, though".

11. Submitted in support of South Camp's assertions regarding loans and amounts from accounts at other banks being deposited into the R.V. Sales account at M & T Bank was the following:

- a) A group of six (6) short-term notes payable to Liberty Bank in the aggregate amount of \$59,000.00, each of which bore the notation "renewed" on its reverse side.
- b) Two deposit receipts from M & T bank in the amounts of \$5,000.00 and \$3,000.00, respectively, and bearing the handwritten notation "loan from Recckio's Lanes" and "loan from McNamara", respectively.
- c) Two deposit receipts from M & T Bank in the amounts of \$4,320.00 and \$23,220.00, respectively, the first of which bears the handwritten notation "loan from Mr. Recckio personally", while the second bears handwritten notations reflecting \$4,500.00 as "Loans from Lanes", with the \$18,720.00 balance of the deposit bearing handwritten notations relating to the sales of various vehicles.
- d) A check in the amount of \$7,630.00, drawn by South Camp on its Liberty Bank account payable to "South Camp R.V., Inc." and bearing the handwritten notation "full payment of loan from Lanes", together with a deposit receipt from M & T Bank in the same amount indicating, however, that the check was returned due to insufficient funds. This deposit receipt bore the handwritten notation "loan from Lanes to Van Shop (return payment)". According to Mr. Recckio's testimony, the check was redeposited and cleared.

12. No formal loan documents (i.e. promissory notes) or repayment schedules were prepared in conjunction with any of the personal loans from Joseph Recckio or from Recckio's Lanes as described herein.

CONCLUSIONS OF LAW

A. That a "... vendor is obligated to maintain records of his sales for audit purposes (Tax Law, §1135), and the State, when conducting an audit, must determine the amount of tax due 'from such information as may be available,' but 'if necessary, the tax may be estimated on the basis of external indices' (Tax Law, §1138, subd. [a])." Matter of George Korba v. New York State Tax Comm., et al., 84 A.D.2d 655.

B. That petitioner does not assert that its books and records were complete for the audit period, or contest the auditor's resort to bank deposits to analyze R.V. Sales. It is noted, in this regard, that a detailed analysis of those records which were maintained by petitioner was the basis upon which the auditor's projections and the resultant assessment were premised, and only in the case of R.V. Sales, where no general ledger or cash receipts journals or sales journals were maintained, did the auditor resort to sources other than petitioner's records. Petitioner does assert, however, that the auditor failed to give credit for deposits to R.V. Sales from other bank accounts and failed to allow for sales to out-of-state customers on which tax should not have been imposed or collected.

C. That the loan proceeds deposited into petitioner's R.V. Sales account at M & T Bank [as specified in Finding of Fact "11-b" (\$5,000.00 and \$3,000.00), "11-c" (\$4,320.00 and \$4,500.00), and "11-d" (\$7,630.00)], aggregating \$24,450.00, are to be allowed in reduction of total taxable R.V. Sales deposits. Those other items included in Finding of Fact "11", specifically the notes payable (aggregating \$59,000.00; see Finding of Fact "11-a") and the balance of the deposit specified in Finding of Fact "11-c" (\$18,720.00) are not allowed. There is no credible proof substantiating the assertion that the former amount

of notes payable was deposited into the R.V. Sales account, while the latter amount, although deposited in the M & T Bank account for R.V. Sales, appears to be receipts from sales of vehicles.

D. That Mr. Recckio's testimony regarding petitioner's business operations does not support any additional reductions to the assessment. His testimony indicating that audited R.V. Sales (based on deposits) of \$1,878,910.59 were four times higher than what he believed such sales to have been, conflicts with the fact that actual R.V. Sales invoices discovered on audit reflect sales of at least \$974,202.61. His testimony reflects estimates of amounts involved, including estimates as to amounts loaned to petitioner, estimated percentage of sales which were exempt as out-of-state sales and an estimate that about ninety percent of sales receipts which were directly deposited to other bank accounts were transferred to the R.V. Sales account at M & T Bank. Without more, such testimony is unpersuasive and does not support further reduction of the assessment. We note that petitioner testified that there were invoices reflecting out-of-state sales, but that no such invoices were submitted, notwithstanding specific allowance of a period of time after the hearing within which to do so. In sum, except as noted in Conclusion of Law "C", the evidence presented does not refute the audit results or warrant further reduction or cancellation of the assessment.


E. That the petition of South Camp Recreational Vehicles, Inc., is granted to the extent indicated in Conclusion of Law "C", but is in all other respects denied and the Notice of Determination and Demand for Payment of Sales

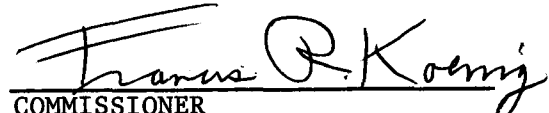
and Use Taxes Due dated December 14, 1981, as modified in accordance herewith,
is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 470 316 360

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Walter S. Hood</i>	
Street and No. <i>2916 Buffalo St.</i>	
P.O., State and ZIP Code <i>Hamburg NY 14075</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 470 316 359

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Shull Camp Supervisor Veda Se</i>	
Street and No. <i>W. Richard Seckis</i>	
P.O., State and ZIP Code <i>S-5026 Souderton Rd</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