

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Dianne B. Lesinski

:

: 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 6/1/79-8/31/79.

:

:

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Dianne B. Lesinski, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dianne B. Lesinski
34 Northern Pkwy.
Buffalo, NY 14225

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
15th day of February, 1985.

David Parchuck

Connie R. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 15, 1985

Dianne B. Lesinski
34 Northern Pkwy.
Buffalo, NY 14225

Dear Ms. Lesinski:

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	:	DECISION
	:	
DIANNE B. LESINSKI	:	
	:	
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 August 31, 1979.	:	

Petitioner, Dianne B. Lesinski, 34 Northern Parkway, Buffalo, New York, 14225, 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 August 31, 1979 (File No. 39135).

A small claims hearing was held before Richard L. Wickham, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on September 21, 1984 at 9:00 A.M., with all briefs to be submitted by October 21, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq. of counsel).

ISSUE

Whether petitioner is entitled to a refund of sales tax paid on the purchase of a motor home.

FACTS

1. On July 13, 1979, petitioner, Dianne B. Lesinski, entered into a sales contract with Sharon Recreation World, Inc. for the purchase of a used 1977 Journey motor home. In accordance with the agreement, the purchase price of the unit was \$17,500.00 on which sales tax was calculated and charged in the amount of \$1,225.00.

2. On November 17, 1981, petitioner filed with the Audit Division an Application for Credit or Refund of State and Local Sales or Use Tax claiming a refund of the \$1,225.00 sales tax paid. Petitioner grounded her refund claim on the basis that the motor home had been purchased for resale under a rental program with Sharon Recreation World, Inc.

3. On June 11, 1982, the Audit Division - Central Sales Tax Section - denied the refund claim of petitioner. The denial letter sent Ms. Lesinski stated, in part:

"Tangible personal property purchased exclusively for 'resale or rental' is excluded from tax pursuant to Section 1101(b)(4)(i) of the Tax Law. However, since your contract with Sharon Recreation World, Inc. gives you the right to occupy the motor home during the year, it was not purchased exclusively for the purpose of rental within the meaning of the Tax Law."

4. On or about July 26, 1979, petitioner took delivery of the motor home purchased from Sharon Recreation World, Inc. Thereafter, on June 4, 1980 and March 26, 1981, petitioner entered into motor home management contracts with Sharon Recreation World, Inc. and its successor Rent-A-Relic, Inc. Each contract was for a period of one year during which Sharon Recreation World, Inc. or Rent-A-Relic, Inc. had the exclusive right to rent or lease the motor home owned by Ms. Lesinski. Further, the motor home was to remain in the care or custody of the lessor for the period of the contract. Paragraph 3 of each contract specifically provided "Owner will be permitted 2 weeks usage during contract term."

5. Petitioner maintains that she purchased the motor home for the sole purpose of raising income through rentals and never used the motor home over the period that the motor vehicle was owned. Petitioner testified that at the time the motor home was delivered she received a promotion at her job as

pharmacist in a K-Mart store which demanded a great deal of her time. After that, a parent took ill and both parents moved in to her home due to their need for constant care. Due to these events, the motor home was placed in the rental program offered by Sharon Recreation World, Inc. and continued by Rent-A-Relic, Inc. Sometime in April 1981 petitioner removed her motor home from the rental program, since ordinary care was not being exercised by the lessor, and stored the vehicle until selling it. A Contract of Sale, submitted subsequent to the hearing, indicates that the motor home was sold on January 1, 1982.

6. During the period petitioner owned the 1977 Journey motor home, records were not maintained to show the mileage which the motor home traveled and the name of the party that put the mileage on the motor home.

CONCLUSIONS

A. That section 1105(a) of the Tax Law imposes a sales tax upon the receipts from every retail sale of tangible personal property. Section 1132(c) provides that for the proper administration of the tax, and to prevent evasion of the tax imposed, it shall be presumed that all receipts for property of any type mentioned in subdivision (a) of section eleven hundred five are subject to tax until the contrary is established, and the burden of proving that any receipt is not taxable thereunder shall be upon the person required to collect tax, or the customer.

B. That petitioner has not shown that the motor home she purchased was purchased exclusively for the purpose of rental. The sale to petitioner of the used motor home is deemed a retail sale subject to sales tax pursuant to sections 1105(a) and 1132(c) of the Tax Law.

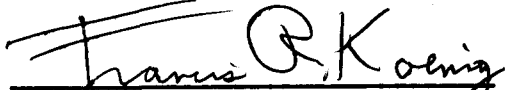
C. That the petition of Dianne B. Lesinski is denied and the refund denial issued June 11, 1982, is sustained.


DATED: Albany, New York

FEB 15 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 169 591

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	<i>Dianne B. Jesinski</i>	
Street and No.	<i>34 Northern Pkwy</i>	
P.O., State and ZIP Code	<i>Buffalo NY 14225</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		