

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Avon Carting Industries Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law for the :
Period 3/1/82-11/30/84. :

State of New York :

ss.:

County of Albany :

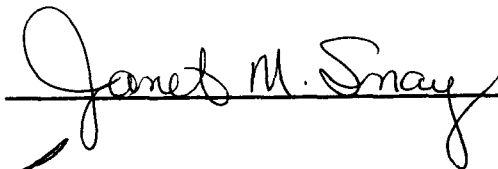
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 25th day of June, 1987, he/she served the within notice of Decision by certified mail upon Avon Carting Industries Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Avon Carting Industries Co.
367 Mountain Ave.
Ridgewood, NJ 07450

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
25th day of June, 1987.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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of :
Avon Carting Industries Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law for the :
Period 3/1/82-11/30/84. :

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 25th day of June, 1987, he served the within notice of Decision by certified mail upon Samuel Roth, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

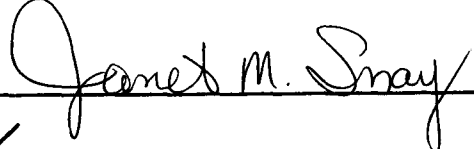
Samuel Roth
753 Bergen Blvd.
Ridgefield, NJ 07657

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
25th day of June, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

June 25, 1987

Avon Carting Industries Co.
367 Mountain Ave.
Ridgewood, NJ 07450

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Samuel Roth
753 Bergen Blvd.
Ridgefield, NJ 07657

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AVON CARTING INDUSTRIES CO.	:	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 March 1, 1982	:	
through November 30, 1984.	:	

Petitioner, Avon Carting Industries Co., 367 Mountain Avenue, Ridgewood, New Jersey 07450, 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 March 1, 1982 through November 30, 1984 (File No. 63761).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 13, 1987 at 10:45 A.M. Petitioner appeared by Joseph Virzi, Partner, and Samuel Roth, P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether the petitioner is liable for tax on the purchase in New Jersey of three trucks which were subsequently used in New York.

FINDINGS OF FACT

1. On July 19, 1985, the Audit Division, as the result of the conduct of a field audit, issued to petitioner, Avon Carting Industries Co. ("Avon"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing additional taxes due of \$24,400.62, plus interest of \$4,490.46 for a total amount due of \$28,891.08 for the period March 1, 1982 through November 30, 1984.

2. During the period at issue, Avon, a partnership engaged in garbage collection, collected trash from office buildings in Manhattan and also operated a paper recycling plant at 1601 Madison Street, Hoboken, New Jersey. Avon's main office was located at 367 Mountain Avenue, Ridgewood, New Jersey. Avon maintained a billing and collection office at 96 Spring Street in New York City.

3. On audit, the Audit Division found that petitioner was a vendor for sales tax purposes and that it had timely filed New York State and local sales and use tax returns. The Audit Division also determined that petitioner was liable for the New York State and New York City tax on the purchase during 1983 and 1984 of three trucks which were used to collect trash in Manhattan. The auditor computed a tax due of \$24,400.62 based on the combined State and City tax rate of 8½ percent and a purchase price of \$295,765.00.

4. The three trucks, tandems in nature with an actual garbage recyclable unit on the back, with a thirty yard capacity, were purchased from the Mack Truck Company in Maspeth, New York and delivered to petitioner at Hoboken, New Jersey where they were garaged at Avon's recycling plant. Maintenance and minor repairs were performed by Avon's employees at the Hoboken facilities. Major repairs were performed in Maspeth by the Mack Truck Company. The trucks were registered in New Jersey which exempts from its Sales and Use Tax Act commercial motor vehicles registered in New Jersey and weighing more than 18,000 pounds. Therefore, no tax was paid to New Jersey on the purchase of the trucks. Five days per week the trucks were used by employees of Avon to collect trash from buildings in Manhattan between the hours of 2:00 A.M. and 6:00 A.M. The trash, which was composed mostly of recyclable paper, was transported back to petitioner's plant in Hoboken where it was recycled and

bailed for shipment to paper mills in New Jersey and Pennsylvania as well as Taiwan, Japan and Italy. Avon processes approximately 2,000 tons of paper monthly. The trucks were also used to transport nonrecyclable trash from Hoboken to dumps or landfills in New Jersey.

5. Petitioner contends that it is not liable for the tax imposed in this case because it is a New Jersey partnership and is taxable under the laws of New Jersey. Further, almost all of its operations: offices, labor, storage and recycling facilities, are in New Jersey. Petitioner also maintains that the trucks were used approximately ten hours per day transporting nonrecyclable trash from the recycling plant to the dumps.

6. Petitioners offered insufficient evidence to show that the trucks were principally used in New Jersey to transport trash to the dumps.

CONCLUSIONS OF LAW

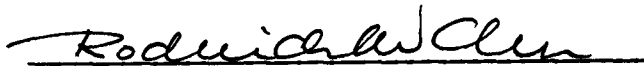
A. That it is evident that Avon's trucks were principally used in New York City and, therefore, the purchaser thereof is subject to the combined New York State and New York City compensating use tax (Tax Law § 1110; see Matter of Xerox Corp. v. State Tax Commn., 71 AD2d 177). Petitioner has failed to sustain the burden of proof required to show that the vehicles were not principally used in New York.

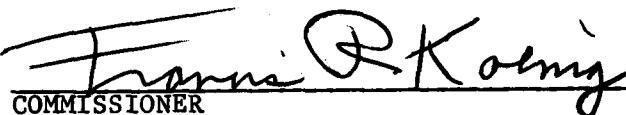
B. That the petition of Avon Carting Industries Co. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 19, 1985 is sustained.

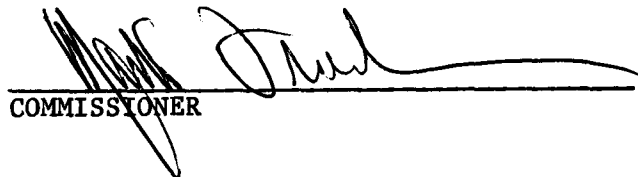
DATED: Albany, New York

STATE TAX COMMISSION

JUN 25 1987


PRESIDENT


COMMISSIONER


COMMISSIONER