

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
DANIEL J. WALTERS  
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 November 30, 1981.

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DECISION

Petitioner, Daniel J. Walters, Route 11, Parish, New York 13131, 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 November 30, 1981 (File No. 38543).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 18, 1984 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

#### ISSUE

Whether petitioner is entitled to a refund of sales tax paid on the purchase of a dump truck that was subsequently resold.

#### FINDINGS OF FACT

1. On July 11, 1981, petitioner, Daniel J. Walters, purchased a 1974 International dump truck for \$12,750.00. At that time, petitioner was engaged in the trucking business. He was not a registered motor vehicle dealer when the truck was purchased, although sometime thereafter he did become a dealer.

2. On November 16, 1981, petitioner sold the dump truck for \$13,500.00 to one Erik Erikson. Petitioner was required to pay sales tax of \$510.00 before he could obtain a new Certificate of Title from the Department of Motor Vehicles

which certificate was necessary to complete the transfer to Erikson. Erikson paid sales tax on the truck when it was registered.

On November 16, 1981, petitioner filed an application for a refund of the sales tax on the basis that the truck was purchased by him as an investment.

3. On June 10, 1982, the Audit Division denied petitioner's refund claim on the grounds that a purchase for investment is a retail sale, as defined in section 1101(b)(4) of the Tax Law.

4. Petitioner did not register, insure or use the truck between July 11, 1981 and November 16, 1981. Petitioner argued that he intended to resell the truck for a profit.

CONCLUSIONS OF LAW

A. That the transaction in which petitioner purchased the 1974 International dump truck constituted a retail sale within the meaning and intent of section 1101(b)(4) of the Tax Law and the receipts therefrom were taxable under section 1105(a) of the Tax Law. Petitioner did not prove that the truck was not used by him during the period July 11, 1981 to November 16, 1981 and thus did not show that it was purchased exclusively for resale. It is noted that at the time of purchase he was not a registered motor vehicle dealer, but rather was engaged in a trucking business.

B. That the petition of Daniel J. Walters is denied and the refund denial issued June 10, 1982 is sustained.

DATED: Albany, New York

APR 04 1985

STATE TAX COMMISSION

Roderich A. Allen  
PRESIDENT  
Francis Q. Koenig  
COMMISSIONER  
Mark J. Jask  
COMMISSIONER