

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
ALICE A. GREENBLATT	:	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 Year 1982.	:	

---

Petitioner, Alice A. Greenblatt, 310 E. 24th Street, New York, New York 10010, 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 year 1982 (File No. 41356).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1985 at 10:45 A.M. Petitioner appeared by Harlan M. Lazarus, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

#### ISSUE

Whether the Audit Division properly denied petitioner's application for refund of sales tax paid on a motor vehicle.

#### FINDINGS OF FACT

1. On July 22, 1982, petitioner herein, Alice A. Greenblatt, timely filed an Application for Refund and/or Credit of Sales or Use Tax Paid on Casual Sale of Motor Vehicle. On said application, petitioner requested a refund of \$586.80 on the grounds that the motor vehicle in question had been a gift and was therefore not subject to sales tax.

2. On October 26, 1982, the Audit Division denied petitioner's application for refund. The letter of denial stated that:

"The transfer of a motor vehicle from a company or a corporation is a retail sale and subject to sales tax in accordance with Section 1105(a) of the Tax Law, except: (Section 1101(b)(4) of the Tax Law).

1. When a motor vehicle is transferred as the result of the distribution of property by a corporation to its stockholders as a liquidating dividend.

2. When a motor vehicle is transferred as the result of the distribution of property by a partnership to its partners in whole or partial liquidation.

Since the transfer of the automobile does not meet the above requirements, sales tax was due, and properly charged, on the fair market value of the vehicle at the time of transfer."

3. The motor vehicle in question was a 1982 Datsun originally purchased from Empire State Datsun, Inc. on October 26, 1981. The invoice issued by Empire State Datsun, Inc. indicated that the motor vehicle was sold to "Gilbert Frank Corp., 1412 Broadway, New York City, New York 10018". Kenneth D. Greenblatt, petitioner's brother, paid for the motor vehicle in question via his personal check dated October 26, 1981. Kenneth D. Greenblatt was President and sole shareholder of Gilbert Frank Corp.

4. The aforementioned 1982 Datsun was purchased for a total cash price of \$12,330.56 less \$2,000.00 allowed for the trade-in of a 1978 Pontiac. Petitioner had use of the 1978 Pontiac, although said vehicle was apparently registered to Gilbert Frank Corp. The 1978 Pontiac had personalized license plates apparently chosen by petitioner.

5. The 1982 Datsun was registered in the name of Gilbert Frank Corp.

6. In July, 1982, petitioner attempted to re-register the 1982 Datsun in her own name. Petitioner submitted a Form ST-170.9, "Affidavit - Gift of Motor Vehicle", signed by Kenneth D. Greenblatt wherein he stated that the 1982 Datsun was transferred to petitioner for no consideration whatsoever. Audit

Division personnel employed at the Department of Motor Vehicles office where petitioner had attempted to re-register the vehicle apparently would not accept the aforementioned affidavit. In order to re-register the vehicle, petitioner paid sales tax on the vehicle's fair market value and thereafter filed the application for refund described in Finding of Fact "1", supra.

7. The motor vehicle in question was transferred to petitioner for no consideration whatsoever. Petitioner did not receive the vehicle as the result of a trade of property, for services rendered or for the assumption of payments.

CONCLUSIONS OF LAW

A. That the motor vehicle in question was transferred to petitioner via a gift and was not a retail sale as defined in section 1101(b)(4) of the Tax Law. Accordingly, petitioner is not liable for the tax imposed by section 1105(a) of the Tax Law.

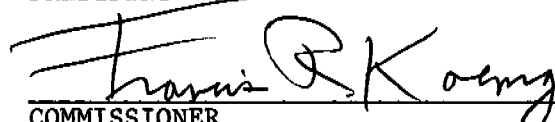
B. That the Audit Division is directed to refund to petitioner sales tax of \$586.80 erroneously paid on the motor vehicle in question, together with such interest as may be lawfully due and payable.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER