

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Maurice S. Englander :  
: AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law :  
for the Period 1/11/74. :

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of April, 1981, he served the within notice of Decision by mail upon Maurice S. Englander, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Maurice S. Englander  
3755 Poinciana Dr. Apt. 112  
Lake Worth, FL 33463

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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  
10th day of April, 1981.

*Cornie A. Hagelund*

*[Signature]*

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

April 10, 1981

Maurice S. Englander  
3755 Poinciana Dr. Apt. 112  
Lake Worth, FL 33463

Dear Mr. Englander:

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 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MAURICE S. ENGLANDER	:	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 January 11, 1974.	:	

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Petitioner, Maurice S. Englander, 2522 Emory Drive E, Cresthaven Villa, N., West Palm Beach, Florida 33406, 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 January 11, 1974 (File No. 17328).

On January 15, 1978, petitioner, Maurice S. Englander, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether petitioner is entitled to a refund of sales tax paid on the purchase of an automobile which he subsequently returned to the vendor.

FINDINGS OF FACT

1. Petitioner, Maurice S. Englander, when he was a New York resident, purchased a 1971 Datsun from Maltbie's Garage Co., Inc. on January 11, 1974. The cost of the automobile was \$1,869.16, plus sales tax of \$130.84, for a total sale price of \$2,000.00. Petitioner took delivery of, and registered the automobile on May 31, 1974.

2. On August 2, 1974, petitioner returned the automobile to Maltbie's Garage Co., Inc. because it was defective and beyond repair. The vendor returned to petitioner a total of \$1,500.00 of the purchase price of the automobile. Said repayment failed to include any of the previously paid sales tax.

3. On August 7, 1974, petitioner filed an application for refund of sales tax in the amount of \$130.84. On December 3, 1974, the Audit Division denied said refund claim on the ground that petitioner "retained possession of the vehicle from January, 1974 until August, 1974; therefore, this does not qualify as a canceled sale".

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 525.5(a) (2) provides for a refund or credit of tax paid on receipts from amounts representing sales where the contract of sale has been canceled.

B. That 20 NYCRR 525.5(b) (1) provides that, where an allowance is made for defective merchandise, the purchaser is required to pay the tax upon the amount due after subtracting the allowance from the sales price. Said section also provides for a refund or credit of the tax attributable to the allowance.


C. That the automobile dealer returned \$1,500.00 out of a total purchase price of \$1,868.16 when the vehicle was returned; that, therefore, the sale was not canceled nor was an allowance made for defective merchandise under the purview of 20 NYCRR 525.5(a) and (b); that the dealer actually repurchased the vehicle from petitioner.

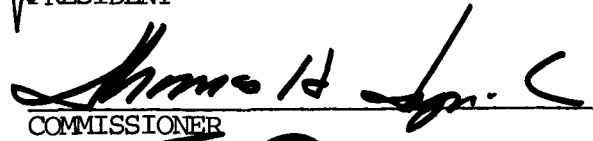
D. That the petition of Maurice S. Englander is denied and the refund denial issued December 3, 1974 is sustained.

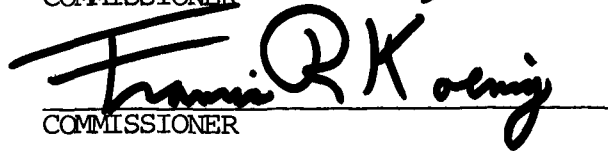
DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER