

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FORD MOTOR COMPANY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
August 31, 1973 through August 31, 1974.

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of September, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Ford Motor Company

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Ford Motor Company
The American Road
Dearborn, Michigan 48121

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 ~~(representative of the)~~
~~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

15th day of September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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age, and that on the 15th day of September, 1976, she served the within
Notice of Determination by ~~certified~~ mail upon John VanDusen, Esq. &
Loren M. Oppen, Esq.

(representative of) the petitioner in the within proceeding,

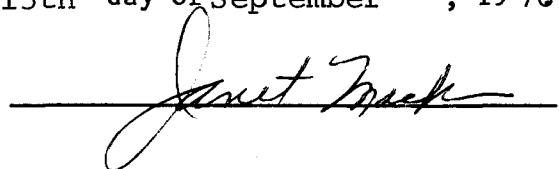
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John VanDusen & Loren M. Oppen, Esqs.
Ford Motor Company
The American Road
Dearborn, Michigan 48121

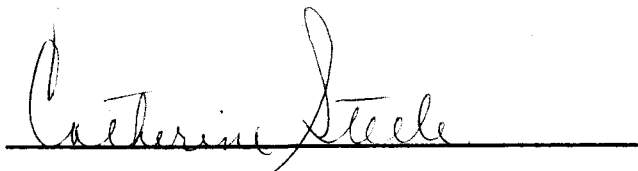
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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 15, 1976

TELEPHONE: (518) **457-3850**

Ford Motor Company
The American Road
Dearborn, Michigan 48121

Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1139 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
FORD MOTOR COMPANY	:	DETERMINATION
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 August 31, 1973 through	:	
August 31, 1974.	:	

Applicant, Ford Motor Company, located at The American Road, Dearborn, Michigan 48121, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 31, 1973 through August 31, 1974.

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on April 30, 1975 and February 4, 1976. Applicant appeared by John VanDusen, Esq. and Loren M. Oppen, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Solomon Seis, Esq. of counsel).

ISSUE

When an out-of-State taxpayer shipped advertising and sales promotional material for which it made no charge to its customers in New York State from outside the State of New York with prepaid shipment made by mail or common carrier, was the applicant taxpayer

liable to New York State for sales or use tax under Articles 28 and 29 of the Tax Law?

FINDINGS OF FACT

1. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated November 29, 1974 (File No. 90719200) was issued by the Sales Tax Bureau and charged the applicant, Ford Motor Company, with a sales and use tax deficiency for the period August 31, 1973 to August 31, 1974 amounting to \$30,039.49 plus \$5,324.12 in penalty and interest for a total allegedly due of \$35,363.61.

2. Applicant, Ford Motor Company, timely filed an application for a refund of sales and use tax paid for the period August 31, 1973 through August 31, 1974.

3. Applicant, Ford Motor Company, manufactures and sells automobiles and automobile parts, shipping them from Michigan to retail dealers in all parts of the United States and abroad. These products are sold only to its franchised retail dealers who sell them to the public.

4. With respect to materials which applicant, Ford Motor Company, sells to retail merchants, it collects and remits all applicable State and local taxes levied in New York State.

5. During the period August 31, 1973 to August 31, 1974, applicant, Ford Motor Company, purchased from numerous printers

brochures, booklets, posters and other similar materials containing pictures and descriptions of products of Ford manufacture.

6. These materials were shipped during the period in question by the printers to independent companies located in Michigan. These independent companies collated and shipped the materials by mail or by common carrier from Michigan to Ford dealers throughout the United States, including dealers in New York State.

7. Applicant, Ford Motor Company, exercised no dominion or control over the advertising material shipped from Michigan to its dealers in New York State, nor over its dealers in New York State with reference to their use of the said advertising material during the period at issue.

8. No charge to its New York State dealers was made by applicant, Ford Motor Company, for the promotional and advertising material it caused to be shipped to them during the period in question.

9. No consideration was paid to the applicant, Ford Motor Company, for the sales promotional material received by dealers in New York State in the period August 31, 1973 through August 31, 1974.

CONCLUSIONS OF LAW

A. That there was no "sale" of the promotional materials shipped to dealers of applicant, Ford Motor Company, within the definition of the Tax Law, section 1101(b)(5).

B. That there was no taxable use of the advertising materials by Ford dealers within the purview of the New York Tax Law, section 1110, which governs the applicability of the use tax in New York State.

C. That the applicant, Ford Motor Company, was not subject to sales and use tax under Articles 28 and 29 of the Tax Law for the free advertising materials sent to its dealers during the period at issue.

D. That the application of Ford Motor Company is granted.

DATED: Albany, New York
September 15, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER