

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
NEMITH CIRCLE DODGE, INC.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period 8/31/69:  
through 5/31/72

State of New York  
County of Albany

Martha Funaro 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 24th day of September, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Nemith Circle Dodge,  
Inc. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Nemith Circle Dodge, Inc.

727-731 Loudon Road  
Latham, New York 12110

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

24th day of September, 1974.

Janet Mack

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEMITH CIRCLE DODGE, INC.

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Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period 8/31/69:  
through 5/31/72

State of New York  
County of Albany

Martha Funaro , 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 24th day of September , 1974 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Murray Talanker,  
C.P.A. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Murray Talanker, C.P.A.  
1510 Central Avenue  
Albany, New York 12205

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

24th day of September , 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**Dated:** Albany, New York

**September 24, 1974**

**Nemith Circle Dodge, Inc.  
727-731 Loudon Road  
Latham, New York 12110**

**Gentlemen:**

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

Please take further notice that pursuant to  
Section(s) **1138 & 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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

*L. Robert Leisner*  
**L. Robert Leisner**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
NEMITH CIRCLE DODGE, INC.	:	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, 1969	:	
through May 31, 1972.	:	

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Applicant, Nemith Circle Dodge, Inc., has filed an application 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, 1969 through May 31, 1972. (File No. 90003970).

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 22, 1974, at 9:30 A.M. Applicant appeared by Murray Talanker, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Did the transfers of demonstrator cars by applicant, Nemith Circle Dodge, Inc., to its salesmen, during the period August 31, 1969 through May 31, 1972, constitute sales subject to the sales and use taxes?

FINDINGS OF FACT

1. Applicant, Nemith Circle Dodge, Inc., filed New York State and local sales and use tax returns for the period August 31, 1969 through May 31, 1972.

2. On November 21, 1972, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use taxes due against applicant, Nemith Circle Dodge, Inc., imposing additional

sales tax for the period August 31, 1969 through May 31, 1972, as a result of a field audit which disclosed additional sales and purchases subject to sales tax. The auditor determined that the applicant was liable for sales tax on purchases not for resale on which sales tax had not been paid and on sales of demonstrator cars made to its salesmen on which no sales tax had been collected. Applicant, Nemith Circle Dodge, Inc., is not contesting its liability for the sales tax on the purchases not for resale. However, it claims that its demonstrator program for its salesmen was not subject to the sales and use tax because the demonstrators were transferred to its salesmen with a take back guarantee by Nemith Circle Dodge, Inc. at no profit or loss.

3. Applicant, Nemith Circle Dodge, Inc., operated an automobile sales business at 727-731 Loudon Road, Latham, New York. It had a demonstrator program for its salesmen which it instituted as a means of saving itself insurance money. Under the program, a car was sold to a salesman who paid for it on a monthly installment basis. The transaction was carried on the books as a sale, i.e., the invoice followed in sequence with regular customer invoices. The car was registered in the name of the salesman who paid his own liability insurance. All other expenses, including maintenance, were borne by the company. The salesman was not free to sell the car to a third party. Rather, the car was turned back to the company for resale to a regular customer. Upon turning back the car, the salesman was reimbursed by the company at the same figure at which it had sold it to him. Under the demonstrator program, should a salesman leave, the company agreed to accept responsibility for payment of the car.

#### CONCLUSIONS OF LAW

A. That the transfers of demonstrator cars by applicant, Nemith Circle Dodge, Inc., to its salesmen during the period

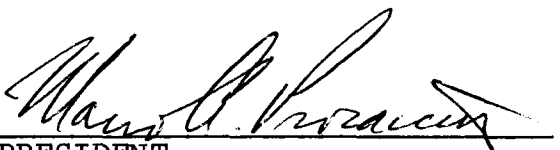
August 31, 1969 through May 31, 1972, constituted sales, subject to the sales and use taxes.

B. That the application of Nemith Circle Dodge, Inc. is denied, and the Notice of Determination and Demand for payment of sales and use taxes dated November 21, 1972, is sustained.

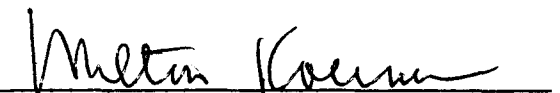
C. That pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York  
September 24, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER