

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SHELDON RUDNICKI

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 ending:
July 12, 1971.

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

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 30th day of April , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sheldon Rudnicki

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Dr. Sheldon Rudnicki

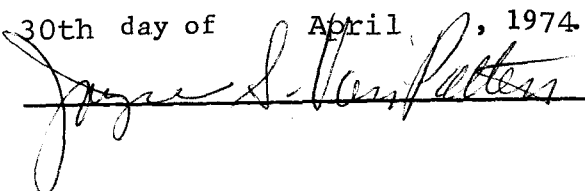
900 Lydig Avenue
Bronx, New York 10462

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

30th day of April , 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino
~~NORMAN F. GAYLIMAN~~, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 30, 1974

Dr. Sheldon Rudnicki
900 Lydig Avenue
Bronx, New York 10462

Dear Dr. Rudnicki:

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

Please take further notice that pursuant to **sections 1138 & 1243** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SHELDON RUDNICKI	:	DETERMINATION
for a Hearing to Review a Determination	:	
of Tax Due or a Denial of a Refund under	:	
the Sales and Use Taxes under Articles 28	:	
and 29 of the Tax Law for the period	:	
ending July 12, 1971.	:	

Sheldon Rudnicki filed an application under section 1139 of the Tax Law for a hearing to review the denial of an application for refund of \$333.83 in sales and use taxes under Articles 28 and 29 of the Tax Law paid to a person required to collect the tax..

A hearing was duly held on January 9, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer.

The applicant appeared in person and without representation. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a car, ordered in Vietnam through a dealer associated with a post exchange and delivered in New York, is exempt from sales tax by reason of the tax immunity of the Federal government.

FINDINGS OF FACT

1. Mr. Rudnicki is a dentist. In 1970 and 1971, he was a Captain in the United States Army and stationed in Quang-Tri, Vietnam. He wished to purchase a car and on May 3, 1971, he

signed an order form with L.A. Champon, a dealer for General Motors Overseas Distributors Corporation, where he had been referred to by the Post Exchange of the Army and Air Force Exchange Service. This order was for a 1971 Buick LeSabre custom four-door sedan to be delivered in July 1971 in New York City by City Buick, a dealer in Long Island City, Queens County.

2. The order form stated that the price was subject to any "Federal, State or local taxes at the time of delivery". A delivery release sent by General Motors Overseas Distributors Corporation to City Buick refers to sales taxes and included the New York State sales tax in the balance due from Mr. Rudnicki.

3. Petitioner returned to the United States and took delivery of the car in New York City and paid the sales tax.

CONCLUSIONS OF LAW

While it is true that the Federal government and its agencies and instrumentality are exempt from sales and use taxes (Tax Law section 116(a)(2), 4 U.S.C. Sec. 107;) and a military post exchange is such an instrumentality and exempt from state taxation. (See Standard Oil v. Johnson, 316 U.S. 481; Falls City Brewing Company v. Reeves, 40 F. Supp. 35.) This exemption is not extended to a private contractor with the Federal government especially when the private contractor is only a concessionaire and the tax is on a sale between the private contractor and a third person not himself exempt.


The application for refund was properly denied.

DATED: Albany, New York
April 30, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER