

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD J. SCHULMAN

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

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period February 28, 1973

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 16th day of May , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Howard J.
Schulman (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Howard J. Schulman
366 Mountain Street
Albany, New York 12209
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

16th day of May , 1974

James S. Van Patten

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
~~Mario A. Procaccino~~
~~X NORMAN K. Z. KILPATRICK~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 16, 1974

Mr. Howard J. Schulman
366 Mountain Street
Albany, New York 12209

Dear Mr. Schulman:

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

Please take further notice that pursuant to **sections 1138 and 1243**
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,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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|---------------------------------------|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| HOWARD J. SCHULMAN | : | DETERMINATION |
| 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 February 28, 1973. | : | |

Applicant,, Howard J. Schulman, 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 February 28, 1973.

A formal hearing was held at the offices of the State Tax Commission, Albany, New York, on October 10, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer appeared personally and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Was the sales tax applicable for transportation charge on an automobile purchased by the taxpayer, a retail buyer?

FINDINGS OF FACT

1. The taxpayer, Howard J. Schulman, timely filed a refund claim for New York State sales and use tax for the period February 28, 1973.
2. A denial of the refund claim of sales and use taxes was issued on April 16, 1973, to the taxpayer.
3. The taxpayer applied for a revision of the denial and for a refund of the sales tax.
4. The taxpayer purchased a 1973 automobile from Metroland Motors for \$2,987.00 and paid a sales tax of \$209.09.

5. The taxpayer asserted that the Federal automobile information disclosure act statement of the auto manufacturer which lists factory options such as bucket seats and disc-brakes and transportation and contains a transportation charge of \$120.00 for transportation to the dealer in Albany varies the price of the car.

6. The purchaser required the dealer to put a notation on the invoice "customer is charged 7% tax on freight in the amount of \$8.40 on \$120.00".

7. The taxpayer asserts that under section 1101(b)(3) of the Tax Law, transportation charges to the taxpayer are not taxable to him.

8. We find, as a fact, that the transportation charge was a cost to the dealer on the disclosure statement, and the dealer's total price to the taxpayer was on his invoice to the taxpayer.

CONCLUSIONS OF LAW


A. The full invoice price to the taxpayer at Albany, New York, where the car was sold and delivered, was subject to sales tax.


B. The taxpayer may not alter the tax consequences by what amounts to a self-serving declaration of F.O.B. Buffalo or Detroit to be entered into his invoice when he, in fact, bought the car in Albany and took delivery in Albany.

C. The taxpayer's application for a refund is in all respects denied.

DATED: Albany, New York
May 16, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER