

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GAMBINO d/b/a FAIRWAY DODGE

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)  
5/31/67 - 2/29/68.

State of New York  
County of Albany

Bruce Batchelor, 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 13th day of January, 1977, she served the within  
Notice of Determination by (~~certified~~) mail upon Joseph Gambino

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

Mr. Joseph Gambino  
d/b/a Fairway Dodge  
395 Buffalo Street  
Hamburg, New York 14075

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~~) 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

13th day of January, 1977.

Bruce Batchelor

Janet Black

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GAMBINO d/b/a FAIRWAY DODGE

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5/31/67 - 2/29/68.

State of New York  
County of Albany

Bruce Batchelor, 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 13th day of January, 1977, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Sheldon M. Markel, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Sheldon M. Markel, Esq.  
1222 Liberty Bank Building  
Buffalo, New York 14202

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) 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

13th day of January, 1977.

Bruce Batchelor

Janet Mark



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

January 13, 1977

TELEPHONE: (518) **457-1723**

Mr. Joseph Gambino  
d/b/a Fairway Dodge  
395 Buffalo Street  
Hamburg, New York 14075

Dear Mr. Gambino:

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.

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

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In the Matter of the Application	:	
of	:	
JOSEPH GAMBINO d/b/a FAIRWAY DODGE	:	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 5/31/67 - 2/29/68.	:	

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Applicant, Joseph Gambino, d/b/a Fairway Dodge, 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 5/31/67 to 2/29/68.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on May 21, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Sheldon M. Markel, Esq., and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Were sales tax assessments pursuant to section 1141(c) of the Tax Law against the taxpayer as a bulk purchaser of assets of another unnamed taxpayer valid?

FINDINGS OF FACT

1. The taxpayer, Robert DeGraw or one of his businesses, failed to file New York State sales and use tax returns for the period 5/31/67 to 2/29/68.

2. A Notice of Determination of sales and use taxes (and penalties) for the period 5/31/67 to 2/29/68 was issued on September 16, 1969, against Joseph Gambino, d/b/a Fairway Dodge under Notice No. 90,202,679A.

3. The taxpayer, Joseph Gambino, an officer of Fairway Dodge Sales, Inc., which had purchased a small quantity of auto parts from Robert DeGraw, applied for a revision of the determination of the deficiencies in sales tax.

4. At the hearing, the taxpayer, Joseph Gambino, asserted that no bulk sale took place, that the notice of tax was improper in its designation of the taxpayer, that the notice failed to describe the bulk sale seller or the prior original taxpayer or his liability and that the tax was paid by a lien filed against the prior taxpayer-seller in bulk.

5. At the hearing, the taxpayer presented proof that he had never been in business during the tax period in question and that the notice of sales tax failed to describe who the alleged bulk sale seller-taxpayer was. The taxpayer asserted that the notice was void.

6. The taxpayer submitted evidence that Fairway Dodge Sales, Inc. was the bulk-sale purchaser and asserted additionally that an incorrect purchaser was named and that the taxpayer was not liable for that further reason.

7. The Bureau presented evidence tending to show that the sales tax liability was that of either Robert DeGraw or Hamburg Dodge City or Bob DeGraw, Inc.

8. The taxpayer further asserted that there was no evidence that the alleged liability was unpaid.

CONCLUSIONS OF LAW

A. We believe that to be valid, a Notice and Demand for sales tax, asserting liability against a bulk-sales purchaser, must, among other things, state the sales tax liability of the bulk-sales seller who must be named and the period involved, and further at the hearing, the evidence of account must show that there is an unpaid sales tax liability of the bulk-sale seller.

B. The Notice and Demand for sales tax failed to indicate the sales tax liability or identity of the bulk sales and the bulk seller. The notice was defective. Joseph Gambino, the applicant herein, was not a bulk-sale purchaser.

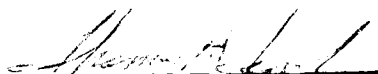
C. The assessment against the applicant is cancelled.

DATED: Albany, New York  
January 13, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER