

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FUTURE MOTORS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
August 1, 1965 through November 30, 1968.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 28th day of February, 1977, ~~he~~ served the within
Notice of Determination by (~~certified~~) mail upon Future Motors, Inc.

~~xx(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Future Motors, Inc.
49-21 Northern Boulevard
Long Island City, New York

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

28th day of February, 1977.

Bruce Batchelor

Janet Bush

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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FUTURE MOTORS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
August 1, 1965 through November 30, 1968.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 28th day of February , 1977, he served the within
Notice of Determination by ~~(certified)~~ mail upon Kenneth S. Knigin, Esq.

(representative of) the petitioner in the within proceeding,

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

Kenneth S. Knigin, Esq.
Ballou, Stoll & Itzler
1180 Avenue of the Americas
New York, New York 10036

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

28th day of February , 1977.

Bruce Batchelor

Justus



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

February 28, 1977

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

Future Motors, Inc.
49-21 Northern Boulevard
Long Island City, New York

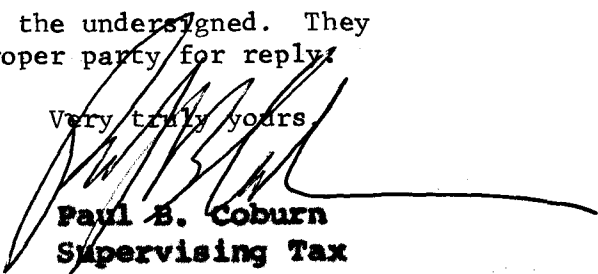
Gentlemen:

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.

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 | : | |
| | : | |
| FUTURE MOTORS, 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 1, 1965 through | : | |
| November 30, 1968. | : | |
| | : | |

Applicant, Future Motors, Inc., of 49-21 Northern Boulevard, Long Island City, New York, has filed an application for revision of a determination of sales and use taxes under Articles 28 and 29 of the Tax Law for August 1, 1965 through November 30, 1968 (File No. 01100). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 15, 1976, at 9:15 A.M. Applicant appeared by Kenneth S. Knigin, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Arthur R. Rosen, Esq. of counsel).

ISSUE

Whether applicant, Future Motors, Inc., an automobile dealer selling Chrysler automobiles, was liable for sales tax on rebates subsequently made by the manufacturer, Chrysler Motors Corporation, to the purchasers of Chrysler products from the applicant.

FINDINGS OF FACT

1. As the result of an audit, the Sales Tax Bureau on December 19, 1969, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Future Motors, Inc., its president, Harold Peterfreund and its secretary, Kenneth Mann. It asserted an additional tax due based on the applicant's reduction of taxable sales, which reduction was predicated upon rebates from Chrysler Motors Corporation (herein after referred to as "Chrysler"), to purchasers of Chrysler vehicles from applicant. The additional tax due, including penalty and interest, totalled \$82,390.81.

2. Applicant, Future Motors, Inc., is an authorized automobile dealer for Chrysler. A significant amount of applicant's automotive and taxicab sales involved sales to "fleet purchasers", purchasers of a number of vehicles ranging from as many as ten to hundreds of vehicles in a given model year. Sales to "fleet purchasers" were made and the sales tax collected by Future Motors, Inc. on the agreed purchase price.

3. In the years 1966, 1967 and 1968, Chrysler conducted programs pursuant to which "fleet purchasers" were offered rebates on vehicles purchased, provided that the "fleet purchasers" set certain purchase objectives, registered in the sales program and met the volume

requirements for the "model year" in question. Such objectives and requirements were specified in a manual for the "model year" entitled "A Value Program for Commercial Fleet Owners." Where a "fleet purchaser" met or exceeded the volume objectives set during the course of the "model year", upon certifying such purchases, he would receive thereafter, a check directly from Chrysler for a rebate. The amount of the rebate would be based on the car models purchased and the extent to which the "fleet purchaser" met or exceeded his objectives for such model year.

4. Subsequently, "fleet purchasers," who received rebates from Chrysler, requested a refund from applicant, Future Motors, Inc., based on a proportionate amount of the rebate received from Chrysler. Applicant mailed checks for that computed amount to such purchasers under cover of a letter which contained an indemnification provision concerning any future New York City sales tax liability, including penalty and interest, Future Motors, Inc. might incur because of this payment. Applicant, Future Motors, Inc., reflected these payments, computed on the basis of the rebates, on its books as reducing taxable sales and sales tax due the State, per accounting practices which were explained to the auditor from the Sales Tax Bureau.

CONCLUSIONS OF LAW

A. That applicant, Future Motors, Inc., was the vendor of the vehicles as defined in section 1101(b)(8)(1) of the Tax Law and that the purchase price of the vehicle sold by Future Motors, Inc., constituted the receipts subject to the sales tax imposed by section 1105(a) of the Tax Law.

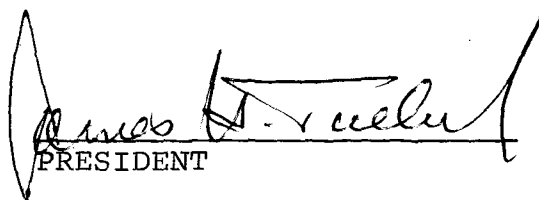
B. That applicant, Future Motors, Inc., was required to collect the sales tax on the purchase price at the time of sale pursuant to section 1132(a) of the Tax Law, and that a refund or credit of such tax could be made only where the tax was erroneously, illegally or unconstitutionally collected or paid (Tax Law, §1139(a)).

C. That although a rebate subsequently paid by Chrysler to the purchaser of vehicles from applicant, Future Motors, Inc., does ultimately effectuate a reduction in the cost to the purchaser, such rebate does not reduce the receipts received by the vendor, Future Motors, Inc., upon which the tax must be collected. Accordingly, a refund of sales tax paid to and collected by applicant, Future Motors, Inc., based on a proportion of the rebate made by Chrysler is not allowed.

D. That the application of applicant, Future Motors, Inc., is granted to the extent that all penalties and interest above minimum is waived; that except as so granted, the application is in all other respects denied; and that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 19, 1969.

DATED: Albany, New York
February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER