

STATE OF NEW YORK

STATE TAX COMMISSION

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. :
:

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.

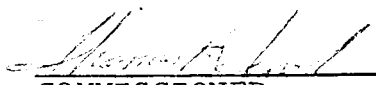
C. The assessment against the applicant is cancelled.

DATED: Albany, New York
January 13, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER