

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD BIELER d/b/a

CAR WHOLESALERS, MAHOPAC

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 ~~(X)~~
March 1, 1971 through February 14, 1973.

AFFIDAVIT OF MAILING

State of New York
County of Albany

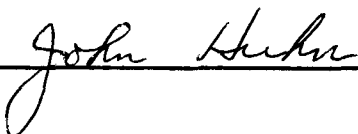
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 31st day of March, 1978, ~~he~~ served the within
Notice of Determination by ~~(represented)~~ mail upon Leonard Bieler d/b/a Car
Wholesalers, Mahopac ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Leonard Bieler
d/b/a Car Wholesalers, Mahopac
Route 6
Mahopac, New York 10541
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)~~
~~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

31st day of March, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LEONARD BIELER d/b/a
CAR WHOLESALERS, MAHOPAC

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 ~~Taxable~~ Period (x) :
March 1, 1971 through February 14, 1973.

State of New York
County of Albany

John Huhn , 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 31st day of March , 1978, he served the within
Notice of Determination by (~~registered~~) mail upon Norman A. Glassman

(representative of) the petitioner in the within proceeding,

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

as follows: Norman A. Glassman, Esq.
218 West 72nd Street
New York, New York 10023

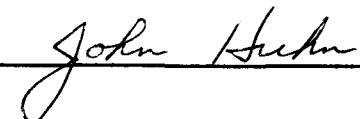
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

31st day of March , 1978

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STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

March 31, 1978

Leonard Bieler
d/b/a Car Wholesalers, Mahopac
Route 6
Mahopac, New York 10541


Dear Mr. Bieler:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyzywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
LEONARD BIELER d/b/a : DETERMINATION
CAR WHOLESALERS, MAHOPAC :
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 March 1, 1971 through :
February 14, 1973. :

Applicant, Leonard Bieler d/b/a Car Wholesalers, Mahopac, Route 6, Mahopac, New York, filed an application 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 March 1, 1971 through February 14, 1973 (File No. 10063).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 23, 1977 at 9:15 A.M. Applicant appeared by Norman A. Glassman, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether applicant properly collected sales tax on gasoline sales during the period March 1, 1971 through February 14, 1973.

FINDINGS OF FACT

1. During the period March 1, 1971 through February 14, 1973, applicant operated gasoline service stations in the Westchester County area.

2. The Sales Tax Bureau conducted an examination of applicant's books and records for the period March 1, 1971 through February 14, 1973. As a result of said audit, it issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant on August 20, 1974, in the amount of \$12,408.18, plus penalty and interest of \$4,187.56, for a total due of \$16,595.74.

3. The additional tax of \$12,408.18 determined by the Sales Tax Bureau to be due from applicant was arrived at on the basis of applicant's undercollection of sales tax on the sale of gasoline.

4. Applicant contended that the undercollection of sales tax on the sale of gasoline was due to a misleading and ambiguous statement on Sales Tax Bureau Form ST-110.1 (Sales Tax Schedule for Gasoline) which was the basis for applicant's computation of sales tax due on each gallon sold.

5. Form ST-110.1 states the following: "Gasoline: The price per gallon shown above includes the 4¢ Federal Tax and 8¢ State Gasoline Tax, but the Sales Tax per gallon is based on the price excluding the State Gasoline Tax."

6. In arriving at the sales tax to be collected per gallon, applicant's accountant (allegedly on the basis of the aforesaid statement) subtracted the State's eight-cent gasoline tax from the per gallon selling price of gasoline, prior to the utilization of the sales tax schedule for gasoline. Since the sales tax due which was listed on said schedule was computed on the price per gallon of gasoline exclusive of the State's eight-cent gasoline tax, the accountant reduced the selling price per gallon of gasoline by sixteen cents rather than by eight cents. Therefore, applicant undercollected sales tax on each gallon of gasoline it sold.

CONCLUSIONS OF LAW

A. That applicant undercollected sales tax due on the gasoline it sold during the period March 1, 1971 through February 14, 1973.

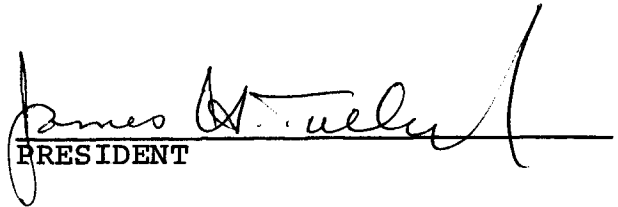
B. That regardless of the fact that applicant's undercollection of sales tax due was the result of a mis-interpretation of Sales Tax Bureau Form ST-110.1, applicant is required to remit to the State Tax Commission the total amount of tax imposed in accordance with the meaning and intent of section 1137 of the Tax Law.

C. That all penalties imposed against applicant are cancelled and interest is reduced to the minimum statutory rate.

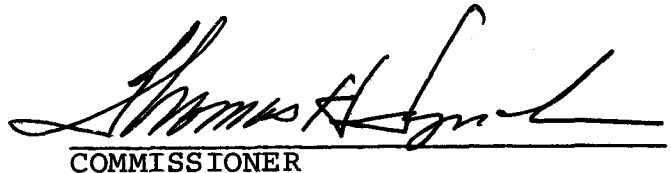
D. That the application of Leonard Bieler d/b/a Car Wholesalers, Mahopac is granted to the extent indicated in Conclusion of Law "C"; that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 20, 1974, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
March 31, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER