

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD V. BRANDT

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) ~~XXXXXX~~ of Period(s) :
February 22, 1975

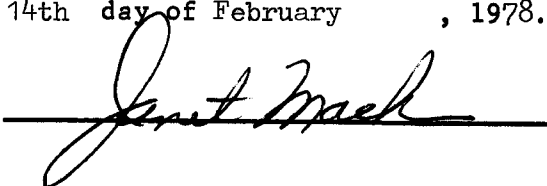
State of New York
County of Albany

John Huhn , 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 14th day of February , 1978 , she served the within
Notice of Determination by ~~(certified)~~ mail upon Donald V. Brandt
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Donald V. Brandt
88 Atlantic Place
Hauppauge, New York 11787
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

14th day of February , 1978.







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

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

February 14, 1978

Donald V. Brandt
88 Atlantic Place
Hauppauge, New York 11787

Dear Mr. Brandt:

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 Chyrywaty
Hearing Examiner

cc: ~~Petitioner's Representative~~
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application
of
DONALD V. BRANDT
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 February 22, 1975.

DETERMINATION

Applicant, Donald V. Brandt, 88 Atlantic Place, Hauppauge, New York 11787, 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 February 22, 1975 (File No. 15344).

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 March 31, 1977. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund of sales tax paid in the amount of \$35.00, as a result of a \$500.00 manufacturer's rebate on the purchase of a new automobile.

FINDINGS OF FACT

1. On February 22, 1975, applicant, Donald V. Brandt, purchased a 1975 Chrysler Newport automobile from Smithtown Chrysler Plymouth, Inc. for \$3,825.00, plus the trade-in of his used automobile. Applicant paid sales tax on said purchase in the sum of \$267.75.

2. As a result of the aforesaid purchase, applicant became eligible for a \$500.00 manufacturer's rebate which consisted of a \$300.00 Cash Back Award payment attributable to the purchase of the new automobile and a \$200.00 Cash Back Trade-in Bonus payment attributable to the trade-in of his used automobile.

3. Approximately five weeks after applicant received the Chrysler Newport automobile, he received a check in the amount of \$500.00 from Chrysler Motors Corporation, Detroit, Michigan, in payment of the manufacturer's rebate.

4. On May 15, 1976, applicant filed an application for refund of sales tax in the amount of \$35.00, asserting that the manufacturer's rebate of \$500.00 was a reduction in the sale price of the automobile.

5. The Sales Tax Bureau denied the application upon the grounds that the price of an automobile purchased is determined by the buyer's agreement with the dealer and that the sales tax is based on this amount. Further, the subsequent rebate from the

manufacturer does not affect the amount of money the dealer receives from the customer; therefore, proper tax was charged.

CONCLUSIONS OF LAW

A. That section 1101(b) (3) of the Tax Law defines the term receipt as "the amount of the sales price of any property... taxable under this article valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser... but excluding any credit for tangible personal property accepted in part payment and intended for resale...."

B. That section 1105(a) of the Tax Law imposes a tax on "the receipts from every retail sale of tangible personal property except as otherwise provided in this article."

C. That according to section 1139(a) of the Tax Law, a refund or credit of tax collected or paid may be made only where the tax was "...erroneously, illegally or unconstitutionally collected or paid...."

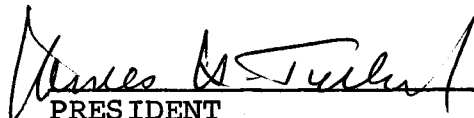
D. That the amount of the receipt subject to tax is \$3,825.00. The \$500.00 rebate did not reduce the amount of said receipt upon which the tax was required to be collected by the vendor, nor did it reduce the price paid by the applicant to the vendor; therefore, the tax was not erroneously, illegally or unconstitutionally collected or paid.


E. That the application of Donald V. Brandt is denied.

DATED: Albany, New York

STATE TAX COMMISSION

February 14, 1978


PRESIDENT


COMMISSIONER


COMMISSIONER