

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PHILANZ OLDSMOBILE, 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 Year(s) or Period(s) :
~~September 1, 1972 through February 28, 1975~~

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 22nd day of March , 19 78, he served the within
Determination by ~~XXXXXXXXXX~~ mail upon Philanz Oldsmobile, Inc.

(~~representative of~~) the petitioner in the within proceeding,

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

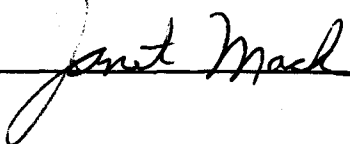
as follows: Philanz Oldsmobile, Inc.
960 Ridge Road
E. Rochester, NY 14621

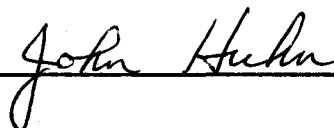
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXX~~
~~XXXXXXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXX~~ petitioner.

Sworn to before me this

22nd day of March , 19 78







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

March 22, 1978

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

Philans Oldsmobile, Inc.
960 Ridge Road
E. Rochester, NY 14621

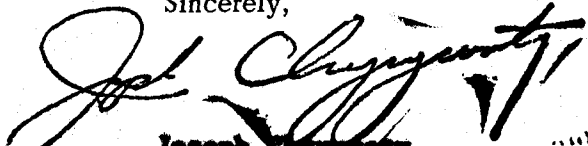
Gentlemen:

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 & 1249~~ 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 Chrysothy
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

PHILANZ OLDSMOBILE, 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 September 1, 1972 through
February 28, 1975 :

Applicant, Philanz Oldsmobile, Inc., 960 Ridge Road, East Rochester, New York 14621, 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 September 1, 1972 through February 28, 1975 (File No. 11808).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 10, 1977 at 2:45 P.M. Applicant appeared by Philip J. Lanzatella, applicant's president, and by Arthur V. Dubert, applicant's business manager. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the applicant was liable for use tax on its demonstrator vehicles.

FINDINGS OF FACT

1. On October 7, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Philanz Oldsmobile, Inc., for the period September 1, 1972 through February 28, 1975 in the sum of \$1,902.52 in tax, penalty and interest. Said Notice was issued as the result of an audit of applicant's records and represents use tax due on its demonstrator vehicles.

2. Applicant, Philanz Oldsmobile, Inc., is a new and used car sales agency, serving the Rochester and Monroe County area. Applicant filed New York State and local sales and use tax returns for the period September 1, 1972 through February 28, 1975. On these returns, applicant reported use tax on six demonstrator vehicles used by its corporate offices, managers and sales staff. The employees used only these six vehicles for personal purposes.

3. On audit, the Sales Tax Bureau determined that in addition to the six demonstrator vehicles the applicant reported on its sales tax returns, its sales staff used additional demonstrators for personal purposes. Therefore, it assessed a tax on the use of these vehicles. The Bureau determined that the applicant used additionally and in a taxable manner, nine, eleven and eight demonstrator vehicles for the years 1972, 1973, and 1974, respectively. It computed a use tax due based on depreciation at the rate of two percent per month. The Sales Tax Bureau contended that the applicant's sales staff used the demonstrator vehicles for personal purpose, such as driving them home, and that this use was deemed taxable.

4. The applicant's sales staff did not use the nine, eleven and eight demonstrator cars for the years 1972, 1973 and 1974, respectively, for personal purposes.

CONCLUSIONS OF LAW

A. That during the period at issue, the applicant properly paid a use tax on the six demonstrator vehicles used for personal purposes by its employees and that no additional vehicles were used in a taxable manner.

B. That the application of Philanz Oldsmobile, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 7, 1975 is cancelled.

DATED: Albany, New York
March 22, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER