

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAURENCE SCHNEE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~years~~ Period ~~(s)~~ :
June 17, 1974 to June 19, 1974

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 13th day of December , 1978, She served the within

Notice of Determination by ~~certified~~ mail upon Laurence Schnee

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

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

as follows: Laurence Schnee

464 Neptune Avenue

Brooklyn, New York 11224

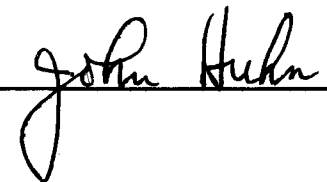
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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
~~XXXXX~~
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

13th day of December , 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

December 13, 1978

**Laurence Schnae
464 Neptune Avenue
Brooklyn, New York 11224**

Dear Mr. Schnae:

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 CHYRIWATT
HEARING EXAMINER**

~~XXXX Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
LAURENCE SCHNEE	:	
for Revision of a Determination or for	:	DETERMINATION
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period June 17, 1974 to June 19,	:	
1974.	:	

Applicant, Laurence Schnee, 464 Neptune Avenue, Brooklyn, New York 11224, filed an application for revision of a determination or for refund of sales and use taxes under Article 28 and 29 of the Tax Law for the period June 17, 1974 to June 19, 1974 (File No. 10269).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 8, 1978 at 1:15 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund of sales tax paid on the purchase of a motor vehicle which was subsequently resold.

FINDINGS OF FACT

1. Applicant, Laurence Schnee, purchased a 1969 Ford from one Irving Orenstien. Applicant paid the sales tax due thereon in the amount of \$42.00 on June 17, 1974, when he registered said vehicle with the Department of Motor Vehicles.

2. On June 18, 1974, applicant sold the vehicle to a local gas station after learning that the cost of the necessary repairs were beyond his financial means. Applicant also felt that the vehicle was too big for either his comfort or safe driving. On the following day, June 19, 1974, applicant returned the license plates, receiving a full refund (less one dollar) from the Department of Motor Vehicles.

3. On July 2, 1974, applicant filed an application for refund of sales tax paid in the amount of \$42.00. On September 5, 1974, the Sales Tax Bureau denied said claim.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property.

B. That the purchase by applicant, Laurence Schnee, of a motor vehicle is a retail sale of tangible personal property which is subject to tax, pursuant to section 1105(a) of the Tax Law.

C. That the application of Laurence Schnee is denied and the Notice of Refund Denial issued September 5, 1974 is sustained.

DATED: Albany, New York
December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER