

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Linda T. Day :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Sales & Use Tax :

under Article 28 & 29 of the Tax Law

for the Period 6/1/74-8/31/74. :

State of New York

County of Albany

Jay Vredenburg, 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 28th day of September, 1979, he served the within notice of Determination by mail upon Linda T. Day, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Linda T. Day

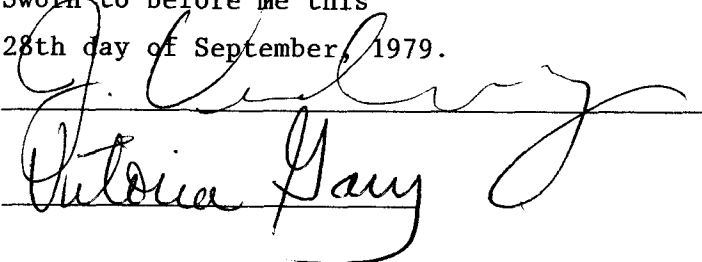
Box 23

Lowman, NY 14861

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
28th day of September, 1979.

  
Patricia Gay

STATE OF NEW YORK  
STATE TAX COMMISSION

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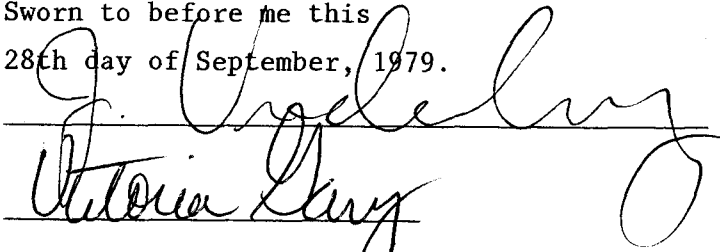
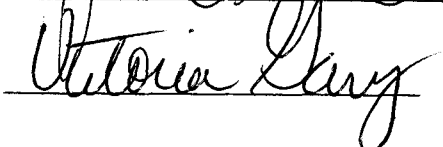
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs  
Ziff, Weiermiller  
301 William St.  
Elmira, NY 14901

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  
28th day of September, 1979.

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Linda T. Day  
Box 23  
Lowman, NY 14861

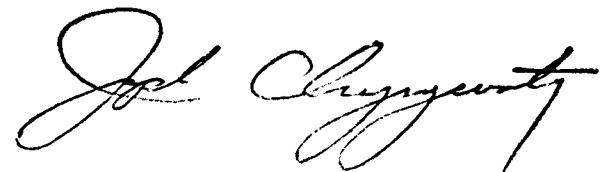
Dear Ms. Day:

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,



cc: Petitioner's Representative  
Ziff, Weiermiller  
301 William St.  
Elmira, NY 14901  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 44 Hawley Street, Binghamton, New York, on September 27, 1978 at 10:45 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

Whether applicant is entitled to a refund for sales tax paid on the purchase of an automobile which was subsequently repossessed.

1. On November 2, 1974, applicant, Linda T. Day, filed an Application for Credit or Refund of State and Local Sales or Use Tax (Form ST-137) in the amount of \$319.27. This amount represents the sales tax paid on the purchase of an automobile. Applicant claimed that a sale never actually took place and, therefore, she was

entitled to the refund.

2. On December 19, 1974, the Sales Tax Bureau denied the refund claim.

3. On July 9, 1974, applicant purchased a 1974 Fiat from Elmira Chrysler-Plymouth, Inc. for \$4,561.00, plus sales tax of \$319.27. Applicant paid \$319.27 in cash as a downpayment and financed the balance through a retail installment contract executed with the dealership. The dealership then assigned the contract to Marine Midland Bank.

4. Applicant found the automobile defective and returned it to the dealership for repairs on July 11, 1974. After an elapse of approximately six weeks, the automobile still had not been repaired. Applicant advised the dealership that unless she received a new automobile of like quality, the contract would be rescinded and she would not take possession of the defective automobile. The dealership refused to replace the automobile or refund any of applicant's money.

5. On September 23, 1974, Marine Midland Bank repossessed the automobile for applicant's failure to make payments, pursuant to the retail installment contract.

#### CONCLUSIONS OF LAW

A. That section 1101(b)(5) of the Tax Law defines sale, selling or purchase to be "Any transfer of title or possession or both...conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefore..."

B. That the transaction constituted the sale of a motor vehicle to applicant, Linda T. Day, within the meaning and intent of section 1101(b)(5) of the Tax Law.

C. That the sale of the motor vehicle was a retail sale within the meaning and intent of section 1101(b)(4) of the Tax Law and was taxable under section 1105(a) of the Tax Law.

D. That the application of Linda T. Day is denied and the Notice of Refund Denial dated December 19, 1974 is sustained.


DATED: Albany, New York

SEP 28 1975

STATE TAX COMMISSION

PRESIDENT

  
COMMISSIONER

  
COMMISSIONER