

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Philip Gonzalez :  
d/b/a Town Motors : 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 3/1/72 - 8/31/75. :

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 17th day of August, 1979, he served the within notice of Determination by mail upon Philip Gonzalez, d/b/a Town Motors, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip Gonzalez  
d/b/a Town Motors  
88 Robinson St.  
Binghamton, NY 13904

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  
17th day of August, 1979.

Victoria Gary

Jay J. Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Philip Gonzalez  
d/b/a Town Motors  
88 Robinson St.  
Binghamton, NY 13904

Dear Mr. Gonzalez:

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 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,

A handwritten signature in cursive script, likely belonging to John J. Sollecito, the Director.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|---------------|
| In the Matter of the Application       | : |               |
| of                                     | : |               |
| PHILLIP GONZALEZ                       | : | DETERMINATION |
| d/b/a TOWNE MOTORS                     | : |               |
| 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, 1972 through       | : |               |
| August 31, 1975.                       | : |               |

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Applicant, Phillip Gonzalez, d/b/a Towne Motors, 88 Robinson Street, Binghamton, New York 13904, 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, 1972 through August 31, 1975 (File No. 11172).

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 28, 1978 at 1:15 P.M. Applicant appeared by Alexander W. Luckanick, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau, in the absence of books and records, properly used external indices to determine applicant's sales tax liability.

FINDINGS OF FACT

1. On November 14, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period March 1, 1972 through August 31, 1975 in the amount of \$2,630.05, plus penalty and interest of \$805.17, for a total of \$3,435.22.

2. During the period at issue, applicant operated a used car dealership. Applicant did not obtain a Certificate of Authority from the Sales Tax Bureau until January 1, 1974.

3. The Sales Tax Bureau's auditor was unsuccessful in scheduling an audit of applicant's books and records. Therefore, the auditor went to the Department of Motor Vehicles to obtain information regarding applicant's sales of motor vehicles. A detailed listing of sales was prepared from the Motor Vehicle Book of Registry (MV-50) for the period March 1, 1972 through August 31, 1975. Said registry contained the name and address of the purchaser, as well as the year, make, description, and condition of the automobile.

A value was established for each vehicle sold by using the average retail price in the Eastern Edition of the NADA, the Official Used Car Guide, published for the month in which the vehicle was sold. A value of one-third the average retail price was placed on vehicles described as "junk" on the MV-50. A value of \$50.00 was used for those vehicles not listed in NADA because of age, unless a higher value was confirmed by the purchaser through telephone calls. The Auditor did not establish values for vehicles listed as wholesale.

The value of all vehicles sold totaled \$41,305.00, with tax due thereon of \$2,653.30. Tax of \$23.25 paid by applicant was deducted from this amount, leaving additional tax due of \$2,630.05.

4. Applicant contended that the vehicles he sold were other dealers' rejects, and were not in good condition; thus, the NADA average retail price was not an appropriate value. Applicant further contended that some vehicles were registered in his own name and given to members of his family for transportation.

5. Applicant contended that his records were destroyed in a fire at his residence in the latter part of 1974.

6. Applicant failed to submit any documentary evidence to show that the values established by the Sales Tax Bureau were incorrect.

CONCLUSIONS OF LAW

A. That the audit procedures used by the Sales Tax Bureau to determine applicant's sales were proper, pursuant to section 1138(a) of the Tax Law. The resultant findings of additional sales tax for the period March 1, 1972 through August 31, 1975 were supported by substantial documentary evidence.

B. That the application of Phillip Gonzalez d/b/a Towne Motors is denied and the Notice of Determination and Demand for Payment of Sales and use Taxes Due issued November 14, 1975 is sustained.

DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION

James W. Sullivan  
PRESIDENT

Melvin Korman  
COMMISSIONER

Thomas H. G. ...  
COMMISSIONER