

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Shirley Goldenberg :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 of the Tax Law  
for the Period 6/15/76. :

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 Shirley Goldenberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Shirley Goldenberg  
1092 E. Third St.  
Brooklyn, NY 11230

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 G. 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

Shirley Goldenberg  
1092 E. Third St.  
Brooklyn, NY 11230

Dear Ms. Goldenberg:

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, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application :  
of :  
SHIRLEY GOLDENBERG : 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 May, 1976. :  
:

---

Applicant, Shirley Goldenberg, 1092 East 3rd Street, Brooklyn, New York 11230, 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 May, 1976 (File No. 16253).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 13, 1978. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund of sales or use tax paid on the purchase of an automobile.

FINDINGS OF FACT

1. In May of 1976, the applicant, Shirley Goldenberg, purchased a 1967 Pontiac automobile from one Robert Matlack for \$380.00. Although Mr. Matlack was an employee of Pine Belt Chevrolet (an automobile dealer in Lakewood, New Jersey), the automobile at issue was his own personal property and the dealer had no knowledge of the transaction.

2. In order to register the automobile in New York State, applicant paid a tax of \$30.40 and attempted to obtain a certificate of inspection in accordance with Article 5 of the New York Vehicle and Traffic Law; however, the certificate of inspection was denied, since the automobile had a defect that could not be corrected.

3. Applicant returned the automobile to Pine Belt Chevrolet and found that Mr. Matlack was no longer employed there and that his whereabouts were unknown. The dealer denied knowledge of and responsibility for the transaction between applicant and Mr. Matlack; accordingly, the dealer refused to refund the purchase price of the automobile.

4. Applicant contended that she abandoned the automobile at the premises of Pine Belt Chevrolet and never received a cash refund or trade-in allowance, although she subsequently purchased a used car from said dealer.

5. On June 15, 1976, applicant filed an application for refund, contending that she was entitled to a refund of \$30.40 in sales or use tax paid because the automobile was sold under "false pretenses" and because it could not be operated in New York State. On July 23, 1976, the Sales Tax Bureau denied the application for refund in full.

#### CONCLUSIONS OF LAW

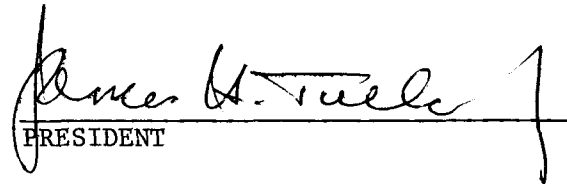
A. The fact that applicant could not obtain a certificate of inspection does not alter the fact that the transaction at issue constituted a retail sale as defined in accordance with section 1101(b)(4) of the Tax Law or a purchase at retail in accordance with section 1101(b)(1) of the Tax Law. Accordingly, tax of \$30.40 was properly imposed and paid, in accordance with the meaning and intent of section 1105(a) or section 1110 of the Tax Law.

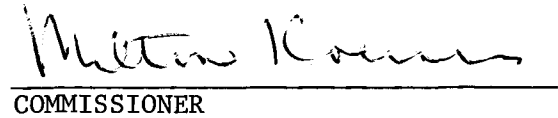
B. That the application of Shirley Goldenberg is in all respects denied.

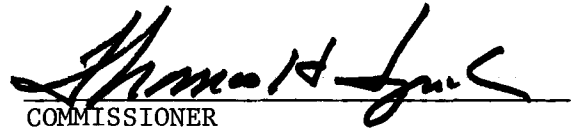
DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER