

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Keith C. Herms :

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 5/21/76. :

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 26th day of November, 1979, he served the within notice of Determination by mail upon Keith C. Herms, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Keith C. Herms
2480 Bauer Rd.
Eden, NY 14057

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
26th day of November, 1979.

Joanne Krapp

J. Vredenburg

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

November 26, 1979

Keith C. Herms
2480 Bauer Rd.
Eden, NY 14057

Dear Mr. Herms:

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) 1139 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
KEITH C. HERMS	:	DETERMINATION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for Period May 21, 1976.	:	

Applicant, Keith C. Herms, 2480 Bauer Road, Eden, New York 14057 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 21, 1976 (File No. 18811).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on April 26, 1979, at 10:45 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund of sales tax paid on the purchase of a motor home which was subsequently used for rental purposes as well as personal use.

FINDINGS OF FACT

1. On January 27, 1977, applicant, Keith C. Herms, filed an application for refund of sales tax paid on a motor home purchased for rental purposes. On March 11, 1977, the Sales Tax Bureau denied the refund claim in the amount of \$1,098.50 on the grounds that the motor home was not purchased exclusively for rental.

2. Applicant purchased a motor home from Suburban Trailers on May 21, 1976 and paid sales tax of \$1,190.00. Applicant occasionally used the motor home for his personal use. The motor home also was rented to the general public by applicant and/or his agent. Sales tax was collected on the rentals.

3. The applicant requested a refund of \$1,098.50 or 12/13ths of the sales tax paid on the purchase price of the motor home. The refund was requested on the grounds that the motor home was purchased for rental purposes. The applicant estimated that he personally used the vehicle 1/13th of the time during 1976.

CONCLUSIONS OF LAW

A. That the purchase of the motor home was not exclusively for the purpose of rental and therefore was not purchased exclusively for resale within the meaning of section 1101(b) (4) of the Tax Law.

B. That the purchase of the motor home was a retail sale as defined by section 1101(b) (4) of the Tax Law subject to the imposition of sales tax within the meaning and intent of section 1105(a) of the Tax Law.

C. That the application of Keith C. Herms for refund of \$1,098.50 sales tax paid is denied and the Notice of Refund Denial issued March 15, 1977 is sustained.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER