

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Frederick P. Recksiek :

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 Year 1976. :

State of New York
County of Albany

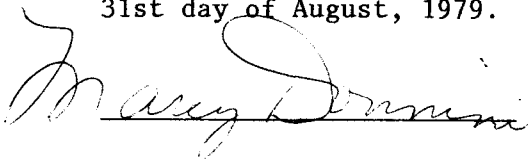
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Determination by mail upon Frederick P. Recksiek, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

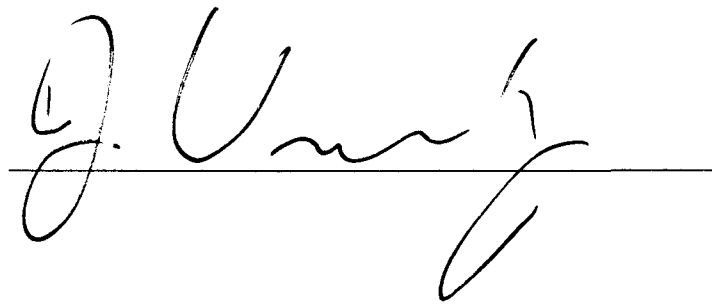
Frederick P. Recksiek
1 Linwood La.
Fort Salonga, NY 11768

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
31st day of August, 1979.


Mary Dominici


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 31, 1979

Frederick P. Recksiek
1 Linwood La.
Fort Salonga, NY 11768

Dear Mr. Recksiek:

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 & 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,

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 :
FREDRIC P. RECKSIEK : 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 July 15, 1975. :
:

Applicant, Fredric P. Recksiek, 1 Linwood Lane, Fort Salonga, New York 11768, 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 July 15, 1975 (File No. 17513).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 11, 1978. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether applicant, the purchaser of a new 1975 automobile, was entitled to a refund of sales tax on the subsequent rebate of \$200.00 from the manufacturer of said automobile.

FINDINGS OF FACT

1. On November 19, 1976, the Sales Tax Bureau received an Application for Credit or Refund of State and Local Sales or Use Tax (Form ST-137) from applicant, Fredric P. Recksiek. The refund claim of \$14.00 was based on a rebate check of \$200.00 which applicant received from Chrysler Motors Corporation in February of 1976.

2. On July 15, 1975, applicant purchased a 1975 Dodge Dart Sedan from Tunis-Huntington Dodge, Inc. of Huntington, New York.

The following is a summary of said transaction:

Selling Price	\$3,875.00	
Trade-in ('71 Volks.)	<u>1,263.00</u>	
Net Selling Price		\$2,612.00
State and Local Sales Tax (7%)		182.84
State Inspection and Documentation		13.00
Total Paid		<u>\$2,807.84</u>

3. The Chrysler Motors Corporation sent applicant a rebate check for \$200.00, dated February 24, 1976, thanking applicant for his participation in the Chrysler rebate program.

4. Applicant maintained that the rebate was an adjustment of the sales price of the automobile.

CONCLUSIONS OF LAW

A. That Tunis-Huntington Dodge, Inc. was the vendor of the automobile as defined in section 1101(b)(8)(i)(A) of the Tax Law. The net selling price per bill-of-sale of Tunis-Huntington Dodge, Inc. constituted the receipt subject to sales tax, pursuant to section 1101(b)(3) of the Tax Law.

B. That Tunis-Huntington Dodge, Inc. was required to collect sales tax on the receipt subject to tax at the time of sale, pursuant to section 1132(a) of the Tax Law. A refund or credit of such tax could be made only when the tax was erroneously, illegally or unconstitutionally collected or paid (section 1139(a) of the Tax Law).

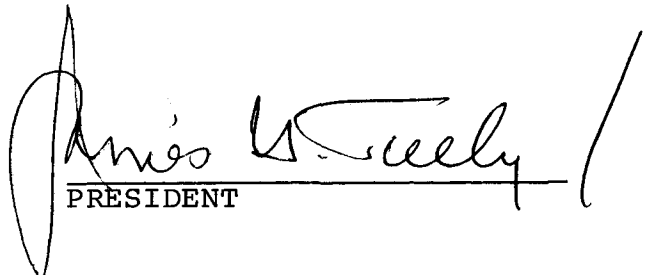
C. That although a rebate subsequently paid by Chrysler Motors Corporation to applicant ultimately effectuates a reduction in the cost to applicant, such rebate does not reduce the receipt received by the vendor, Tunis-Huntington Dodge, Inc., on which the tax must be collected. Accordingly, a refund of sales tax paid, based on a rebate made by Chrysler Motors Corporation, is not allowed (Matter of Future Motors, Inc., State Tax Commission decision dated February 28, 1977).

D. That the application of Fredric P. Recksiek is denied.

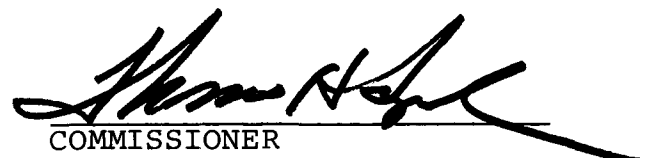
DATED: Albany, New York

STATE TAX COMMISSION

AUG 31 1979


PRESIDENT


COMMISSIONER


COMMISSIONER