

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Charles B. Reynolds :  
d/b/a Reynolds Auto Service : 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 12/1/70 - 8/31/77. :

State of New York  
County of Albany

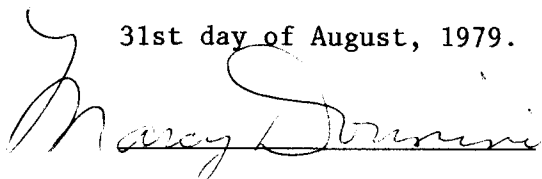
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Determination by mail upon Charles B. Reynolds, d/b/a Reynolds Auto Service, the petitioner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

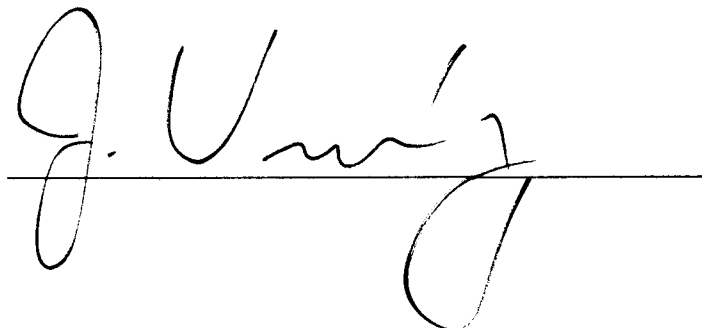
Charles B. Reynolds  
d/b/a Reynolds Auto Service  
Star Rte.  
Franklin, NY 13775

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 Sturini

  
Jay 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

Charles B. Reynolds  
d/b/a Reynolds Auto Service  
Star Rte.  
Franklin, NY 13775

Dear Mr. Reynolds:

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,

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

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 :

CHARLES B. REYNOLDS d/b/a  
REYNOLD'S AUTO SERVICE :

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 December 1, 1970 through August 31,  
1973. :

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Applicant, Charles B. Reynolds d/b/a Reynold's Auto Service, Star Route, Franklin, New York 13775, 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 December 1, 1970 through August 31, 1973 (File No. 11796).

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 26, 1978 at 9:15 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

#### ISSUE

Whether applicant was required to collect the compensating use tax from purchasers of motor vehicles who reside in Otsego County.

FINDINGS OF FACT

1. Applicant, Charles B. Reynolds d/b/a Reynold's Auto Service, filed New York state and local sales and use tax returns for the period December 1, 1970 through August 31, 1973.

2. On February 6, 1974 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period December 1, 1970 through August 31, 1973, in the amount of \$532.40, plus penalty and interest of \$111.27, for a total of \$643.67.

3. Applicant is engaged in the sale and service of automobiles. The business is located in Delaware County, which has not imposed a local sales or use tax.

4. On audit, the Sales Tax Bureau examined sales invoices for the period June 1, 1973 through August 31, 1973. This examination disclosed that applicant made sales to residents of Otsego County and did not collect the 2% local tax. Because of the discrepancy, the Sales Tax Bureau prepared a list of all vehicle sales made to customers with Otsego County addresses for the entire audit period, by using the Motor Vehicle Book of Registry. Such sales totaled \$26,620.00. Applicant was held liable for his failure to collect the 2% local tax in the amount of \$532.40.

5. Applicant contended that the amount of tax to be collected is based on point-of-delivery and that since all vehicles sold were picked up at his business location, he was correct in collecting only the New York State tax.

Applicant further contended that New York State's Instructions for Completing New York State and Local Sales and Use Tax Returns (Form ST-150.1) does not mention that the customer's residence may be the basis for the amount of tax to be collected.

CONCLUSIONS OF LAW

A. That applicant was a person required to collect the tax as defined in section 1131(1) of the Tax Law.

B. That applicant, as a person required to collect the tax, was expressly required to collect any sales and use taxes imposed by a local jurisdiction in New York State, pursuant to section 1254(a) of the Tax Law.

C. That in accordance with the provisions of section 1214(a) of the Tax Law, on the sale of motor vehicles, applicant was required to collect from the purchaser any compensating use tax imposed by a city, county, or school district in which the purchaser resided.

D. That the application of Charles B. Reynolds d/b/a Reynold's Auto Service is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 6, 1974 is sustained.

DATED: Albany, New York

**AUG 31 1979**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER