

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Watertown Tire & Supply Inc. :

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 8/1/65-11/30/67. :

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 7th day of July, 1980, he served the within notice of Determination by mail upon Watertown Tire & Supply Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

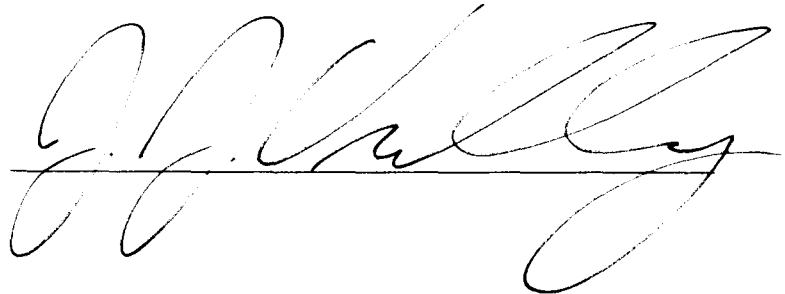
Watertown Tire & Supply Inc.  
465 Court St.  
Watertown, NY 13601

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  
7th day of July, 1980.

Rebecca A. Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Watertown Tire & Supply Inc. :

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for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
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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 7th day of July, 1980, he served the within notice of Determination by mail upon Philip A. Maphey the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

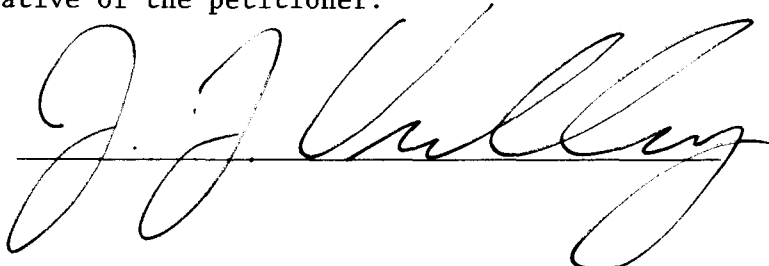
Mr. Philip A. Maphey  
Conboy, McKay, Bachman & Kendall  
407 Sherman St.  
Watertown, NY 13601

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
7th day of July, 1980.

Doroah A. Bank



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

July 7, 1980

Watertown Tire & Supply Inc.  
465 Court St.  
Watertown, NY 13601

Gentlemen:

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:

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  
Philip A. Maphey  
Conboy, McKay, Bachman & Kendall  
407 Sherman St.  
Watertown, NY 13601  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
WATERTOWN TIRE & SUPPLY, INC.	:	DETERMINATION
for a Revision of a Determination or for	:	
Refund of Sales and Use Taxes under Articles	:	
28 and 29 of the Tax Law for the period	:	
August 1, 1965 through November 30, 1967.	:	

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Applicant, Watertown Tire & Supply, Inc., 465 Court St., Watertown, New York 13601, 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 August 1, 1965 through November 30, 1967 (File No. 01929).

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, Syracuse, New York, on June 28, 1972. Applicant appeared by Conboy, McKay, Bachman & Kendall (Philip Maphey, Esq., of counsel). The Audit Division appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the sale of business assets made by K.O. Charlebois Tires, Inc. to applicant constituted a bulk sale.

II. Whether applicant timely filed a Notification of Sale, Transfer or Assignment in Bulk.

III. Whether the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against applicant correctly stated the amount of tax due.

IV. Whether section 1141(c) of the Tax Law violates the constitutions of the United States or the State of New York.

FINDINGS OF FACT

1. Applicant, Watertown Tire & Supply, Inc. purchased from K.O. Charlebois Tires, Inc. approximately 10 percent of the business assets belonging to K.O. Charlebois Tires, Inc. and consisting of equipment, tools and supplies. The bill of sale for said transaction, dated November 6, 1967, provided that the sale price was \$1,675.00 and that full payment was to be made before or upon delivery of the property.

2. On December 22, 1967, the Sales Tax Bureau obtained from applicant a Notification of Sale, Transfer or Assignment in Bulk together with a certified check in the amount of \$67.00 for the 4 percent tax due on the purchase. The "Scheduled Date of Sale" as indicated on said notification was October 16, 1967.

3. Applicant took possession of the purchased assets sometime during the month of September, 1967. Payment for the assets was made in installments, and the first payment was made in January, 1968.

4. On June 28, 1968, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period August 1, 1965 through November 30, 1967. This notice was revised on December 9, 1968 to reflect additional tax due of \$2,046.19, plus penalty and interest of \$660.73, for a total amount due of \$2,706.92.

The aforementioned notice arose from an audit conducted by the Sales Tax Bureau on the books and records of K.O. Charlebois Tires, Inc. The notice to applicant represented its liability as the purchaser in a bulk sale transaction for taxes determined to be due from the seller, K.O. Charlebois Tires, Inc.

5. The applicant timely filed an application for a hearing to review the above determination.

6. Applicant contended that the Notification of Sale, Transfer or Assignment in Bulk was timely filed since it was given to the Sales Tax Bureau ten days prior to the payment for the purchase. Applicant also contended that the amount assessed on the Notice of Determination and Demand for Payment of Sales and Use Taxes Due was erroneous since it exceeded the price paid by applicant for the assets. Applicant further contended that section 1141(c) of the Tax Law violates the due process clause of both the United States and New York constitutions.

CONCLUSIONS OF LAW

A. That, pursuant to section 1141(c) of the Tax Law, a sale of any part or the whole of a vendor's business assets is a bulk sale; that, accordingly, the sale to applicant of a portion of the business assets belonging to K.O. Charlebois Tires, Inc. is a bulk sale.

B. That the notification of a bulk sale required by section 1141(c) of the Tax Law must be filed by the purchaser ten days prior to taking possession of the subject of said sale or paying therefore, whichever occurs first; that accordingly, the Notification of Sale, Transfer or Assignment in Bulk submitted by the applicant to the Sales Tax Bureau was not timely filed.

C. That, pursuant to section 1141(c) of the Tax Law, the liability of the purchaser shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, whichever is higher. That accordingly, the liability of applicant is hereby reduced to \$1,675.00, the purchase price of the assets transferred.

D. That the constitutionality of the laws of the State of New York are presumed at the administrative level of the State Tax Commission.

E. That the application of Watertown Tire & Supply, Inc. is granted to the extent indicated in Conclusion "C" above; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on December 9, 1968; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

JUL 07 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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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 15th day of August, 1980, he served the within notice of Determination by mail upon Watertown Tire & Supply Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Watertown Tire & Supply Inc.  
430 Factory St.  
Watertown, NY 13601

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  
15th day of August, 1980.

Ester A. Bank

