

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Jerry R. Ashline :  
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 Year :  
1978.

\_\_\_\_\_  
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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Jerry R. Ashline, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerry R. Ashline  
Rt. 11  
Mooers Forks, NY 12959

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  
27th day of November, 1981.

Bonnie A. Haglund

Jay Vredenburg

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

November 27, 1981

Jerry R. Ashline  
Rt. 11  
Mooers Forks, NY 12959

Dear Mr. Ashline:

Please take notice of the Decision 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
JERRY R. ASHLINE  
for Revision of a Determination or for Refund  
of Sales and Use Taxes under Articles 28 and  
29 of the Tax Law for the Year 1978.

---

DECISION

Petitioner, Jerry R. Ashline, Route 11, Mooers Forks, New York 12959, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the year 1978 (File No. 23571).

On May 11, 1981, the petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and submitted the case to the State Tax Commission based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner is entitled to a partial refund of sales tax paid on the purchase of an automobile.

FINDINGS OF FACT

1. Petitioner, Jerry R. Ashline, sold his 1977 Chevrolet Blazer to McMartin Motor Co., Inc. for \$4,500.00.
2. On November 14, 1977, petitioner purchased a 1978 Volkswagen from Northway Volkswagen, Inc. for \$5,540.85, plus sales tax of \$387.86, for a total of \$5,928.71.
3. On June 30, 1978, petitioner, Jerry R. Ashline, filed an Application for Refund and/or Credit of Sales or Use Tax Paid on Casual Sale of Motor

Vehicle (ST-170.10) in the amount of \$315.00. Petitioner claimed that the \$4,500.00 he received from the dealer on the sale of his automobile should be credited against the sales price of the new vehicle purchased from a different dealer and that only the net sales price is subject to tax.

4. On September 21, 1978, the Audit Division denied the refund claim on the grounds that petitioner did not trade-in the motor vehicle to a registered dealer as part payment on the purchase of another motor vehicle.

CONCLUSIONS OF LAW

A. That 20 NYCRR 526.5(f) provides that "[a]ny allowance or credit for any tangible personal property accepted in part payment by a vendor on the purchase of tangible personal property or services and intended for resale by such vendor shall be excluded when arriving at the receipt subject to tax...".

That petitioner did not trade-in a motor vehicle as part payment towards the purchase price of another motor vehicle but rather consummated two separate transactions. Accordingly, petitioner is not entitled to a refund of the sales tax imposed under section 1105(a) of the Tax Law.

B. That the petition of Jerry R. Ashline is denied and the refund denial issued September 21, 1978 is sustained.


DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER