

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Barnes Detective Agency :
Auto Recovery Bureau, Inc. :
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 6/1/75-2/28/78. :

AFFIDAVIT OF MAILING

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 9th day of January, 1981, he served the within notice of Decision by mail upon Barnes Detective Agency, Auto Recovery Bureau, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barnes Detective Agency
Auto Recovery Bureau, Inc.
136-37 37th Ave.
Flushing, NY 11354

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
9th day of January, 1981.

Cornie G. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of
Barnes Detective Agency :
Auto Recovery Bureau, Inc. :
for Redetermination of a Deficiency or a Revision :
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AFFIDAVIT OF MAILING

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 9th day of January, 1981, he served the within notice of Decision by mail upon Gary Koenig 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. Gary Koenig
Leipzig & Starr
9 Park Pl.
Great Neck, NY 11021

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
9th day of January, 1981.

Annice G. Hagedorn

J. Vredenburg

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

January 9, 1981

Barnes Detective Agency
Auto Recovery Bureau, Inc.
136-37 37th Ave.
Flushing, NY 11354

Gentlemen:

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
Gary Koenig
Leipzig & Starr
9 Park Pl.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BARNES DETECTIVE AGENCY,	:	DECISION
AUTO RECOVERY BUREAU, INC.	:	
	:	
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 June 1, 1975	:	
through February 28, 1978.	:	

Petitioner, Barnes Detective Agency, Auto Recovery Bureau, Inc., 136-37 37th Avenue, Flushing, New York 11354, 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 period June 1, 1975 through February 28, 1978 (File No. 24169).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 1, 1980 at 10:45 A.M. Petitioner appeared by Steven Tillman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's daily charge for holding a repossessed automobile for its customers is subject to sales tax.

FINDINGS OF FACT

1. Petitioner, Barnes Detective Agency, Auto Recovery Bureau, Inc., recovers repossessed automobiles for banks.

2. On July 10, 1978, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period June 1, 1975 through February 28, 1978 for taxes due of \$8,596.72, plus minimum statutory interest of \$1,136.03, for a total of \$9,732.75.

3. On audit, the Audit Division analyzed sales for the month of March 1977 and found that petitioner did not collect tax from its customers on charges for towing and charges that the Audit Division determined were for storage. Such charges totaled \$37,840.00 and \$69,614.00, respectively, for the audit period. The applicable taxes asserted thereon were \$3,027.20 for towing and \$5,569.52 for storage.

4. At the hearing, the Audit Division conceded that the tax determined on towing charges of \$3,027.00 be adjusted to \$530.64 based on documentation submitted by petitioner subsequent to the audit. Petitioner agreed to and has paid the revised amount of tax due plus applicable interest thereon.

5. Petitioner brought the recovered automobiles to New York City where they were held in an area maintained by petitioner until the bank advised as to the disposition. Petitioner charged a fee for each day the automobile remained in its custody. Such charges were listed separately on the invoice to the customer and the receipts from which were recorded in the general ledger in an account entitled "storage".

6. Petitioner argued that the charges were a penalty fee rather than a storage charge since the term storage connotes willful or voluntary consent and there is no such consent by the party from whom the automobile was repossessed.

In the alternative, petitioner argued that the automobiles are held for sale in the regular course of business.

CONCLUSIONS OF LAW

A. That section 1105(c) (4) of the Tax Law provides for the imposition of sales tax on the service of storing all tangible personal property not held for sale in the regular course of business. That the automobiles held by petitioner are not for sale as part of its business operations; therefore, the daily fee charged by petitioner for the services described in Finding of Fact "5" constituted charges for storage of tangible personal property within the meaning and intent of said section of the Tax Law.

B. That in accordance with Finding of Fact "4", the taxes due are reduced to \$6,100.16.

C. That the petition of Barnes Detective Agency, Auto Recovery Bureau, Inc., is granted to the extent indicated in Conclusion of Law "B". That the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 10, 1978 and credit petitioner with its payment of \$650.90; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER