

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Genesee Ford Truck Sales, 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 12/1/75-11/30/78.	:	

State of New York
County of Albany

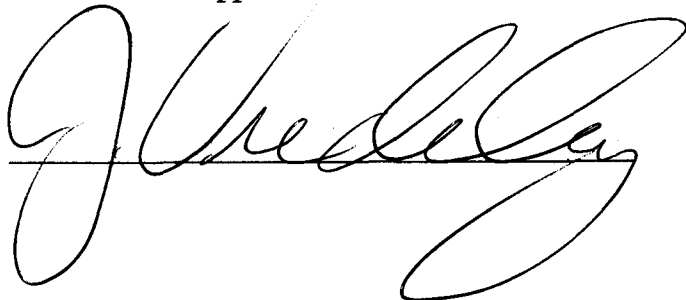
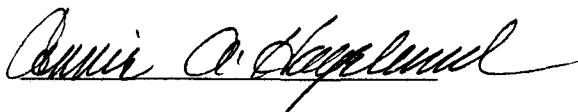
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1982, he served the within notice of Decision by certified mail upon Genesee Ford Truck Sales, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Genesee Ford Truck Sales, Inc.
1280 Jefferson Rd.
Rochester, NY 14623

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
26th day of November, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Genesee Ford Truck Sales, 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 12/1/75-11/30/78. :
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 26th day of November, 1982, he served the within notice of Decision by certified mail upon Rae A. Clark the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rae A. Clark
Sutton, DeLeeuw, Clark & Darcy
31 E. Main St.
Rochester, NY 14614

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
26th day of November, 1982.

Connie A. Haglund

J. Vredenburg

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

November 26, 1982

Genesee Ford Truck Sales, Inc.
1280 Jefferson Rd.
Rochester, NY 14623

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Rae A. Clark
Sutton, DeLeeuw, Clark & Darcy
31 E. Main St.
Rochester, NY 14614
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GENESEE FORD TRUCK SALES, INC.	:	DECISION
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, 1975	:	
through November 30, 1978.	:	

Petitioner, Genesee Ford Truck Sales, Inc., 1280 Jefferson Road, Rochester, New York 14623, 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 December 1, 1975 through November 30, 1978 (File No. 29006).

A small claims hearing was held before Arthur Johnson, Hearing Officer at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on January 21, 1982 at 1:15 P.M. Petitioner appeared by Rae A. Clark, Jr., Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the sale of a truck by petitioner was exempt from tax under section 1117 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Genesee Ford Truck Sales, Inc., was engaged in truck sales and service.
2. On December 20, 1979, 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 covering the period December 1, 1975 through November 30, 1978 for taxes due of \$16,781.93, plus minimum statutory interest of \$3,207.54, for a total of \$19,989.47.

The Department of Taxation and Finance in its answer to the perfected petition stated that the notice should be adjusted to additional tax due of \$10,436.98.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period December 1, 1975 through August 31, 1976, to December 20, 1979.

4. At the hearing, petitioner conceded that it owed taxes of \$7,732.04. The balance, \$2,704.94, represents the tax asserted on the sale of a truck to Meat Dispatch, Inc. on or about August 9, 1978. Petitioner did not collect sales tax on said transaction.

5. Petitioner was not furnished an exemption certificate by the purchaser at the time the sale took place. In October, 1980, Meat Dispatch, Inc. supplied petitioner with a Certificate for Purchase of Motor Vehicle by Non-Resident of New York State. Said certificate indicated that the resident address and permanent place of abode of Meat Dispatch, Inc. was 2103 17th Street East, Palmetto, Florida.

6. Meat Dispatch, Inc. was listed in the 1978 Rochester telephone directory showing an address at 1000 Jefferson Road. Meat Dispatch, Inc. filed a Franchise Tax Report on Gross Earnings for 1978 on which it allocated a portion of its receipts from business in New York State.

CONCLUSIONS OF LAW

A. That section 1117(a) of the Tax Law provides that receipts from any sale of a motor vehicle shall not be subject to the retail sales tax despite

the taking of physical possession within this state, provided that the purchaser, at the time of taking delivery:

- (1) is a nonresident of this state,
- (2) has no permanent place of abode in this state,
- (3) is not engaged in carrying on in this state any employment, trade, business or profession in which the motor vehicle will be used in the state, and
- (4) prior to taking delivery, furnishes to the vendor: any affidavit, statement ..., which the tax commission may require to assure proper administration...

Subsection (b) provides that a vendor shall not be liable for failure to collect tax on receipts from any sale of a motor vehicle provided that the vendor prior to making delivery obtains and keeps available for inspection by the tax commission any affidavit, statement ..., as may be required to be furnished under subdivision (a) above.

B. That petitioner, at the time of making delivery of the truck to Meat Dispatch, Inc. or prior thereto, did not obtain any evidence of exemption as required by section 1117 of the Tax Law. Accordingly, petitioner is liable for the tax it failed to collect in accordance with section 1133(a) of the Tax Law.

C. That the petition of Genesee Ford Truck Sales, Inc. is granted to the extent that the additional taxes due are reduced to \$10,436.98 in accordance with Finding of Fact "2"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due

issued December 20, 1979; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 26 1982

STATE TAX COMMISSION

ACTING PRESIDENT

Robert B. Barclay

COMMISSIONER

Francis D. Koenig

COMMISSIONER

[Signature]

[Signature]