

STATE OF NEW YORK

STATE TAX COMMISSION

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|---|---|----------------------|
| In the Matter of the Petition | : | |
| of | : | |
| Allan D. Hendrickson | : | |
| for Redetermination of a Deficiency or a Revision | : | AFFIDAVIT OF MAILING |
| of a Determination or a Refund of Sales & Use Tax | : | |
| under Article 28 & 29 of the Tax Law for the | : | |
| Period 5/79. | : | |

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Allan D. Hendrickson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

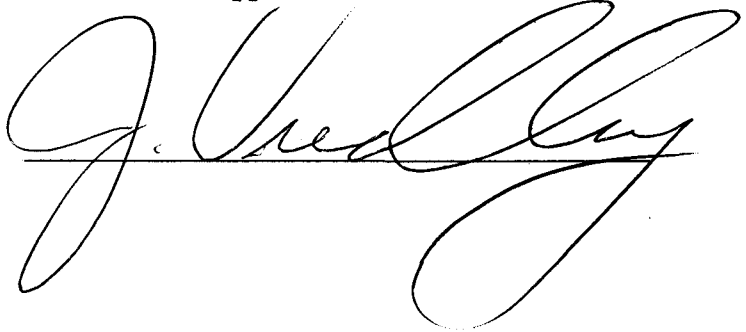
Allan D. Hendrickson
21 Winsor Pl. W.E.
Jamestown, NY 14701

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
29th day of December, 1982.

Kathy Pfaffenbach
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 29, 1982

Allan D. Hendrickson
21 Winsor Pl. W.E.
Jamestown, NY 14701

Dear Mr. Hendrickson:

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 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ALLAN D. HENDRICKSON

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 May, 1979.

DECISION

Petitioner, Allan D. Hendrickson, 21 Winsor Place W.E., Jamestown, New York 14701, 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 May, 1979 (File No. 32140).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on May 11, 1982 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Allan D. Hendrickson, purchased a 1979 Cadillac from Howlett Cadillac-Oldsmobile, Inc. for \$17,074.00 on April 10, 1979. Petitioner traded in a 1976 Cadillac for which the dealer allowed \$4,874.00 towards the sale price, leaving a net price of \$12,200.00 on which sales tax of \$854.00 was collected.

2. Petitioner experienced many mechanical problems with the car and was unsuccessful in having the dealer satisfactorily repair it. The dealer agreed

to refund the purchase price, including the sales tax. However, the 1976 Cadillac used as a trade-in had been sold to another dealer. On May 23, 1979, petitioner purchased said vehicle from the other dealer for \$3,700.00, plus sales tax of \$259.00, for a total of \$3,959.00.

3. On June 30, 1980, petitioner filed an application for a refund for the sales tax of \$259.00 paid on the repurchase of the 1976 Cadillac. Petitioner claimed that had the car not been sold to another dealer, he would have recovered it without paying any sales tax.

4. The Audit Division denied the refund claim on October 15, 1980 on the grounds that the repurchase of the same car traded to a different dealer was a separate transaction subject to tax.

CONCLUSIONS OF LAW

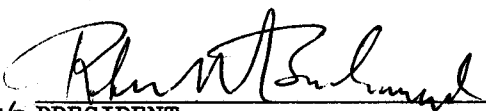
A. That petitioner recovered the 1976 Cadillac previously used as a trade-in by consummating a transaction separate and distinct from the cancellation of the sale involving the 1979 Cadillac; that said separate transaction constituted a retail sale pursuant to section 1101(b)(4) of the Tax Law. Accordingly, petitioner is not entitled to a refund of the sales tax imposed under section 1105(a) of the Tax Law.

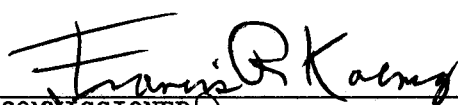
B. That the petition of Allan D. Hendrickson is denied and the refund denial issued October 15, 1980 is sustained.

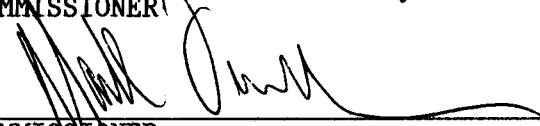
DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER