

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

September 28, 1983

Jesse M. Hilsen
35 E. 85th St.
New York, NY 10028

Dear Mr. Hilsen:

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) 1139 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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jesse M. Hilsen : 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 5/31/77.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Jesse M. Hilsen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jesse M. Hilsen
35 E. 85th St.
New York, NY 10028

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
28th day of September, 1983.

Connie A. Hagelund

Susan Powell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JESSE M. HILSEN : 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 May 31, 1977. :

Petitioner, Jesse M. Hilsen, 35 East 85th Street, New York, New York 10028, 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 31, 1977 (File No. 27542).

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 December 9, 1982 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On April 22, 1977, petitioner, Jesse M. Hilsen, purchased a 1967 Rolls Royce at a public auction from Ban-Credit Service Agency, Inc. for \$13,500.00 plus sales tax of \$1,080.00. Petitioner's research prior to purchasing the vehicle indicated that its value was between \$16,000.00 and \$17,000.00.

Petitioner testified that his intent was to resell the automobile immediately for a profit.

2. Prior to April 22, 1977, petitioner requested a sales tax identification number from the Department of Taxation and Finance and at the same time inquired as to the applicability of sales tax on the above transaction if he did not receive the number before he purchased the vehicle. Petitioner was advised that he would be required to pay the sales tax and upon receipt of the identification number, he may apply for a refund.

The Department of Taxation and Finance issued a Certificate of Authority (ID number) on May 6, 1977.

3. On June 9, 1977, petitioner filed an application for a refund for the sales tax of \$1,080.00 paid on the purchase of the automobile on the basis that it was purchased for resale.

4. Petitioner sold the automobile to one Sandi Scarf in August, 1977 for \$10,000.00 and collected applicable sales tax of \$800.00 thereon. Thereafter, petitioner filed a sales tax return on which he took a credit for the \$800.00 in tax collected against the refund claim of \$1,080.00, thereby amending such refund claim to \$280.00.

5. In January, 1979, the Audit Division denied petitioner's refund claim (\$1,080.00) in full on the grounds that petitioner did not substantiate that the vehicle was purchased for resale.

As a result, on March 31, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for taxes due of \$800.00, plus penalty and interest of \$384.00, for a total of \$1,184.00.

6. Petitioner found many mechanical defects with the automobile after he took possession. Petitioner spent \$1,256.16 for repairs between May, 1977 and July, 1977.

Petitioner testified that the automobile remained in the repair shop from the time it was purchased until it was sold and that the automobile was never used personally. Petitioner argued that the repairs were necessary in its preparation for resale.

7. Petitioner registered the automobile with the Department of Motor Vehicles. He also obtained insurance effective May 25, 1977 with an expiration date of August 2, 1977. Petitioner also owned a 1973 Ford which was used for personal and business purposes.

Petitioner argued that since he was not a motor vehicle dealer, he was required to register and insure the automobile in order to sell it.

8. The loss suffered by petitioner on the purchase and sale of the automobile was claimed on his federal income tax return filed for 1977.

9. Petitioner has not made any other purchases or sales since he registered with the Department of Taxation and Finance.

10. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That petitioner's purchase of the 1967 Rolls Royce constituted a retail sale within the meaning and intent of section 1101(b)(4) of the Tax Law and was taxable under section 1105(a) of the Tax Law. Petitioner did not prove that the automobile was purchased for resale. At the time of purchase he was not registered as a vendor for sales tax purposes and registration and insurance are not prerequisites for resale of a motor vehicle between individuals. Accordingly, petitioner is not entitled to a refund.

B. That the penalty is cancelled and the interest shall be reduced to the minimum statutory rate.


C. That the petition of Jesse M. Hilsen 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 March 31, 1980; and that, except as so granted, the petition is in all other respects denied and the refund denial and the foregoing notice are sustained.

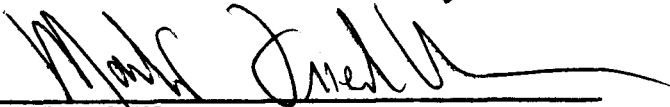
DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 208 232

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Jesse M. Hilsen	
Street and No.	
35 E. 85th St.	
P.O., State and ZIP Code	
New York, NY 10028	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982