

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

September 28, 1983

Erik A. Nicolaysen, Inc.
77 S. Greeley Ave.
Chappaqua, NY 10514

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) 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 :
Erik A. Nicolaysen, 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 3/3/80. :

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 Erik A. Nicolaysen, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Erik A. Nicolaysen, Inc.
77 S. Greeley Ave.
Chappaqua, NY 10514

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.

L Susan Powell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Connie P. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ERIK A. NICOLAYSEN, INC. : DECISION
for Revision of a Determination or for Refund :
of Sales and Use Taxes under Articles 28 & 29 :
of the Tax Law for the Period March 3, 1980. :

Petitioner, Erik A. Nicolaysen, Inc., 77 South Greeley Avenue, Chappaqua, New York 10514, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the period March 3, 1980 (File No. 32950).

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 January 11, 1983 at 10:45 A.M. Petitioner appeared by Erik Nicolaysen, President. The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether the transfer of an automobile from petitioner corporation to an individual was a taxable transaction.

FINDINGS OF FACT

1. On February 29, 1980, petitioner, Erik A. Nicolaysen, Inc., filed an Application for Refund and/or Credit of Sales or Use Tax Paid on Casual Sale of Motor Vehicle (ST-170.10) for sales tax of \$100.50 paid on a 1976 Datsun 710 transferred to Louise Nicolaysen. Louise Nicolaysen was the wife of Erik Nicolaysen, the president of the aforesaid corporation. The refund was claimed on the basis that no consideration was paid by Mrs. Nicolaysen for the vehicle.

2. On January 14, 1981, the Audit Division denied petitioner's refund claim on the grounds that the transfer of the vehicle was a retail sale. The claim was further denied on the basis that petitioner was not the person from whom the sales tax was due.

3. On December 8, 1977, pursuant to a Certificate of Amendment of the Certificate of Incorporation of Erik A. Nicolaysen, Inc., petitioner changed the name of the corporation to Nicolaysen - Enke, Inc.

Erik Nicolaysen testified at the time of this change, new stock was issued and all assets of the corporation, with the exception of the vehicle at issue, were transferred to the successor corporation. All the documents relating to the transfer of the vehicle to Louise Nicolaysen, including the statement of transaction and the receipt for the payment of sales tax, are dated in February, 1980 and March, 1980. The conflicting dates are not explained on the record.

4. The Department of Motor Vehicles established a value of \$2,010.00 for the vehicle. Petitioner executed an Affidavit - Sale of Motor Vehicle (ST-170.8) that stated the consideration paid by Louise Nicolaysen for the vehicle was \$2,010.00. Erik Nicolaysen argued that said affidavit was signed under duress since plates for the vehicle would not have been issued otherwise.

5. Petitioner submitted a letter, dated December 31, 1981, from Bruce H. Kashkin, CPA, which stated that "the records of the corporation indicate that the vehicle was completely depreciated in January, 1980 at which time it was removed from the records of the corporation and registered by you personally."

The letter did not indicate how petitioner accounted for the disposition of the vehicle on the books and records.

6. The sales tax was paid on a check issued by Nicolaysen - Enke, Inc. Erik Nicolaysen testified that this was done so at the direction of personnel at the motor vehicle office.

7. Petitioner failed to establish by substantial evidence that the vehicle was fully depreciated or that it received no consideration for the vehicle.

CONCLUSIONS OF LAW

A. That the transfer of the motor vehicle from petitioner corporation to an individual, Louise Nicolaysen, constituted a retail sale within the meaning and intent of section 1101(b)(4) of the Tax Law and therefore is subject to the tax imposed under section 1105(a) of the Tax Law.

B. Notwithstanding Conclusion of Law "A", if the sales tax imposed on the transfer of the vehicle was erroneous, a refund would be due Nicolaysen - Enke, Inc., not the petitioner herein.

C. That the petition of Erik Nicolaysen, Inc. is denied and the refund denial issued January 14, 1981 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983

Rodrick A. Cline
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER

P-481 208 228

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Erik A. Nicolaysen, Inc.	
Street and No.	
77 S. Greeley Ave.	
P.O., State and ZIP Code	
Chappagua, NY 10514	
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