

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louise Smith :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the Year :
1979. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Louise Smith, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louise Smith
200 W. 143rd Street, Apt. #12B
New York, NY 10030

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
31st day of December, 1984.

David Parchuck

Nicola J. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

1947-1948

1949-1950

1951-1952

1953-1954

1955-1956

1957-1958

1959-1960

1961-1962

1963-1964

1965-1966

1967-1968

1969-1970

1971-1972

1973-1974

1975-1976

1977-1978

1979-1980

1981-1982

1983-1984

1985-1986

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

Louise Smith

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Sales & Use Tax
under Article 28 & 29 of the Tax Law for the Year :
1979.

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Jardine J. Fieulleteau, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jardine J. Fieulleteau
271 West 125th St., Rm. 305
New York, NY 10027

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
31st day of December, 1984.

David Parchuck

Nicola J. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

IN SENATE

January 11, 1911

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION OF THE SENATE

PASSED MAY 12, 1909

ALBANY: J.B. LEECH, STATE PRINTER, 1911.

ALBANY: J.B. LEECH, STATE PRINTER, 1911.

ALBANY: J.B. LEECH, STATE PRINTER, 1911.

ALBANY: J.B. LEECH, STATE PRINTER, 1911.

That the Commission on the subject of the proposed amendment to the Constitution of the State of New York, relative to the right of suffrage, has the honor to report to the Senate, as follows:

ALBANY: J.B. LEECH, STATE PRINTER, 1911.

and by separate reports, in which the Commission has the honor to report to the Senate, as follows:

That the Commission on the subject of the proposed amendment to the Constitution of the State of New York, relative to the right of suffrage, has the honor to report to the Senate, as follows:

ALBANY: J.B. LEECH, STATE PRINTER, 1911.

ALBANY: J.B. LEECH, STATE PRINTER, 1911.

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

December 31, 1984

Louise Smith
200 W. 143rd Street, Apt. #12B
New York, NY 10030

Dear Ms. Smith:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Petitioner's Representative
Jardine J. Fieulleteau
271 West 125th St., Rm. 305
New York, NY 10027
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LOUISE SMITH : 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 November 30, 1979.:
:

Petitioner, Louise Smith, 1909 Amsterdam Avenue, New York, New York 10030, 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 November 30, 1979 (File No. 33960).

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 March 12, 1984 at 1:15 P.M. Petitioner appeared by Jardine J. Fieulleteau, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On December 28, 1979, petitioner, Louise Smith, filed an Application for Credit or Refund of State and Local Sales or Use Tax for sales tax of \$1,678.10 paid on the purchase of an automobile. The basis for the refund claim was that the automobile was immediately taken out of New York State and was never registered or used in this state.

2. On May 25, 1981, the Audit Division denied the refund claimed, on the grounds that the automobile was used in New York State.

3. On or about November 16, 1979, petitioner (a New York resident) purchased a 1980 Cadillac from DeMassi Cadillac Co., Inc. in Englewood Cliffs, New Jersey. The purchase price was \$20,976.00 of which \$1,881.84 was financed through General Motors Acceptance Corp. The dealer did not collect any New Jersey or New York sales tax. Petitioner took possession of the automobile in New Jersey and drove to New York where it was driven or garaged for about one week thereafter. The vehicle was then taken to Virginia by petitioner's son (a Virginia resident).

4. On November 19, 1979, petitioner was issued a temporary New York State Insurance Card valid for 60 days.

5. On November 27, 1979, the New Jersey Division of Motor Vehicles issued a receipt registering a New Jersey Certificate of Ownership of the vehicle in the name of petitioner.

6. On November 30, 1979, petitioner paid sales tax of \$1,678.10 directly to the New York State Department of Taxation and Finance.

7. On December 5, 1979, GMAC certified to the New York Department of Motor Vehicles that it held the original New Jersey title and granted its permission for petitioner to register the automobile in New York for 1979.

8. On January 9, 1980, the New Jersey Division of Motor Vehicles issued a temporary non-resident registration to petitioner authorizing the transportation of the vehicle from New Jersey to another state. The registration was valid for 20 days.

9. The automobile was registered by George T. Smith, petitioner's son, in Newport News, Virginia on June 27, 1980.

10. Petitioner purchased the automobile at the request of her son who resided in Virginia. Her son provided all of the funds to purchase the vehicle except for the loan from GMAC. All of the documents involved in the transaction (sales invoice, purchase order, sales tax receipt, insurance, certificate of title) were in the name of petitioner.

Petitioner argued that after the automobile was driven from the dealer's place of business in New Jersey to her home in New York, she never saw the auto again.

11. In a letter dated December 2, 1980, petitioner stated that after paying the sales tax she attempted to register the vehicle in New York; however, the Department of Motor Vehicles would not issue a registration without authorization from GMAC. In the meantime, the automobile left New York State and the New York registration was never obtained.

12. Petitioner offered no evidence with respect to registration of the automobile from the date of purchase (November 16, 1979) to the New Jersey temporary registration (January 9, 1980) and from the expiration of the temporary registration (January 29, 1980) to the Virginia registration (June 27, 1980).

CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law imposes a use tax for use within this state, "of any tangible personal property purchased at retail".

Section 1101(b)(7) defines "use" as the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of such property.

B. That petitioner, a New York resident, purchased tangible personal property in New Jersey which was thereafter brought into New York State. The automobile was driven or garaged in New York for at least one week (petitioner failed to establish the whereabouts or use of the automobile between November 16, 1979 and June 27, 1980) and such activities constitute "use" within the meaning and intent of section 1101(b)(7) of the Tax Law. Accordingly, petitioner is not entitled to a refund of the use tax paid pursuant to section 1110 of the Tax Law.

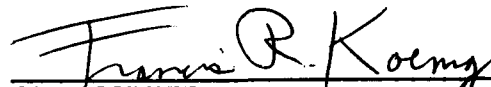
C. That the petition of Louise Smith is denied and the refund denial issued May 25, 1981 is sustained.

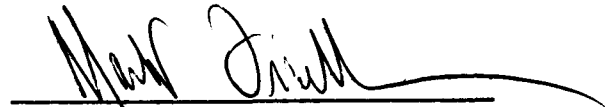
DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 470 316 328
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Louise Smith</i>	
Street and No. <i>200 W 143rd St Apt 12B</i>	
P.O., State and ZIP Code <i>New York NY 10030</i>	
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

P 470 316 329
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Gerard J. Gaudet</i>	
Street and No. <i>271 W. 125th St Km 305</i>	
P.O., State and ZIP Code <i>New York, NY 10027</i>	
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