

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Alice A. Greenblatt :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 of the Tax Law for the Year 1982. :

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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Alice A. Greenblatt, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alice A. Greenblatt
310 E. 24th Street
New York, NY 10010

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
3rd day of October, 1985.

David Parchuck

Ann M. O'Hanlon
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Alice A. Greenblatt :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article 28 of the Tax Law for the Year 1982.:

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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Harlan M. Lazarus, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harlan M. Lazarus
60 Park Ave.
New York, NY 10016

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
3rd day of October, 1985.

David Parchuck

Annunzio R. DiStefano

Authorized to administer oaths
pursuant to Tax Law section 174

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

October 3, 1985

Alice A. Greenblatt
310 E. 24th Street
New York, NY 10010

Dear Ms. Greenblatt:

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
Harlan M. Lazarus
60 Park Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALICE A. GREENBLATT	:	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 Year 1982.	:	

Petitioner, Alice A. Greenblatt, 310 E. 24th Street, New York, New York 10010, 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 year 1982 (File No. 41356).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1985 at 10:45 A.M. Petitioner appeared by Harlan M. Lazarus, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's application for refund of sales tax paid on a motor vehicle.

FINDINGS OF FACT

1. On July 22, 1982, petitioner herein, Alice A. Greenblatt, timely filed an Application for Refund and/or Credit of Sales or Use Tax Paid on Casual Sale of Motor Vehicle. On said application, petitioner requested a refund of \$586.80 on the grounds that the motor vehicle in question had been a gift and was therefore not subject to sales tax.

2. On October 26, 1982, the Audit Division denied petitioner's application for refund. The letter of denial stated that:

"The transfer of a motor vehicle from a company or a corporation is a retail sale and subject to sales tax in accordance with Section 1105(a) of the Tax Law, except: (Section 1101(b)(4) of the Tax Law).

1. When a motor vehicle is transferred as the result of the distribution of property by a corporation to its stockholders as a liquidating dividend.
2. When a motor vehicle is transferred as the result of the distribution of property by a partnership to its partners in whole or partial liquidation.

Since the transfer of the automobile does not meet the above requirements, sales tax was due, and properly charged, on the fair market value of the vehicle at the time of transfer."

3. The motor vehicle in question was a 1982 Datsun originally purchased from Empire State Datsun, Inc. on October 26, 1981. The invoice issued by Empire State Datsun, Inc. indicated that the motor vehicle was sold to "Gilbert Frank Corp., 1412 Broadway, New York City, New York 10018". Kenneth D. Greenblatt, petitioner's brother, paid for the motor vehicle in question via his personal check dated October 26, 1981. Kenneth D. Greenblatt was President and sole shareholder of Gilbert Frank Corp.

4. The aforementioned 1982 Datsun was purchased for a total cash price of \$12,330.56 less \$2,000.00 allowed for the trade-in of a 1978 Pontiac. Petitioner had use of the 1978 Pontiac, although said vehicle was apparently registered to Gilbert Frank Corp. The 1978 Pontiac had personalized license plates apparently chosen by petitioner.

5. The 1982 Datsun was registered in the name of Gilbert Frank Corp.

6. In July, 1982, petitioner attempted to re-register the 1982 Datsun in her own name. Petitioner submitted a Form ST-170.9, "Affidavit - Gift of Motor Vehicle", signed by Kenneth D. Greenblatt wherein he stated that the 1982 Datsun was transferred to petitioner for no consideration whatsoever. Audit

Division personnel employed at the Department of Motor Vehicles office where petitioner had attempted to re-register the vehicle apparently would not accept the aforementioned affidavit. In order to re-register the vehicle, petitioner paid sales tax on the vehicle's fair market value and thereafter filed the application for refund described in Finding of Fact "1", supra.

7. The motor vehicle in question was transferred to petitioner for no consideration whatsoever. Petitioner did not receive the vehicle as the result of a trade of property, for services rendered or for the assumption of payments.

CONCLUSIONS OF LAW


A. That the motor vehicle in question was transferred to petitioner via a gift and was not a retail sale as defined in section 1101(b)(4) of the Tax Law. Accordingly, petitioner is not liable for the tax imposed by section 1105(a) of the Tax Law.

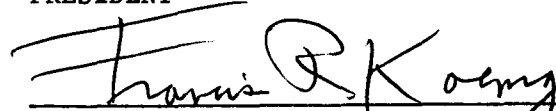
B. That the Audit Division is directed to refund to petitioner sales tax of \$586.80 erroneously paid on the motor vehicle in question, together with such interest as may be lawfully due and payable.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982
★ U.S.G.P.O. 1984-446-014

Sent to <i>Mrs. A. Greenblatt</i>	
Street and No. <i>310 E. 24th St.</i>	
P.O., State and ZIP Code <i>New York, NY 10010</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	

P 153 387 564

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982
★ U.S.G.P.O. 1984-446-014

Sent to <i>Harold M. Lazarus</i>	
Street and No. <i>100 Park Ave.</i>	
P.O., State and ZIP Code <i>New York, NY 10016</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	