

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel J. Walters :
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 :
Period 11/30/81. :

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 4th day of April, 1985, he served the within notice of Decision by certified mail upon Daniel J. Walters, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel J. Walters
Rt. 11
Parish, NY 13131

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
4th day of April, 1985.

David Parchuck

Ann R. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

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

April 4, 1985

Daniel J. Walters
Rt. 11
Parish, NY 13131

Dear Mr. Walters:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DANIEL J. WALTERS	:	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, 1981.	:	

Petitioner, Daniel J. Walters, Route 11, Parish, New York 13131, 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, 1981 (File No. 38543).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 18, 1984 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund of sales tax paid on the purchase of a dump truck that was subsequently resold.

FINDINGS OF FACT

1. On July 11, 1981, petitioner, Daniel J. Walters, purchased a 1974 International dump truck for \$12,750.00. At that time, petitioner was engaged in the trucking business. He was not a registered motor vehicle dealer when the truck was purchased, although sometime thereafter he did become a dealer.

2. On November 16, 1981, petitioner sold the dump truck for \$13,500.00 to one Erik Erikson. Petitioner was required to pay sales tax of \$510.00 before he could obtain a new Certificate of Title from the Department of Motor Vehicles

which certificate was necessary to complete the transfer to Erikson. Erikson paid sales tax on the truck when it was registered.

On November 16, 1981, petitioner filed an application for a refund of the sales tax on the basis that the truck was purchased by him as an investment.

3. On June 10, 1982, the Audit Division denied petitioner's refund claim on the grounds that a purchase for investment is a retail sale, as defined in section 1101(b)(4) of the Tax Law.

4. Petitioner did not register, insure or use the truck between July 11, 1981 and November 16, 1981. Petitioner argued that he intended to resell the truck for a profit.

CONCLUSIONS OF LAW

A. That the transaction in which petitioner purchased the 1974 International dump truck constituted a retail sale within the meaning and intent of section 1101(b)(4) of the Tax Law and the receipts therefrom were taxable under section 1105(a) of the Tax Law. Petitioner did not prove that the truck was not used by him during the period July 11, 1981 to November 16, 1981 and thus did not show that it was purchased exclusively for resale. It is noted that at the time of purchase he was not a registered motor vehicle dealer, but rather was engaged in a trucking business.

B. That the petition of Daniel J. Walters is denied and the refund denial issued June 10, 1982 is sustained.

DATED: Albany, New York

APR 04 1985

STATE TAX COMMISSION

Rodrich A. Clev
PRESIDENT
Francis Q. Koenig
COMMISSIONER
Mark J. Juch
COMMISSIONER

P 693 169 710

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Daniel J. Walters</i>	
Street and No. <i>Et. #</i>	
P.O., State and ZIP Code <i>Parish NY 13131</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	