

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Otto W. Behrens :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law for the :
Period 9/1/79-8/31/82.
_____ :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 9th day of January, 1987, he/she served the within notice of Decision by certified mail upon Otto W. Behrens the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Otto W. Behrens
720 Liberty Ave.
Staten Island, NY 10305

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
9th day of January, 1987.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Otto W. Behrens : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
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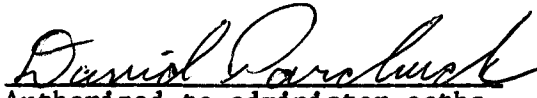
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 9th day of January, 1987, he served the within notice of Decision by certified mail upon Ignazio A. Piedilato, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

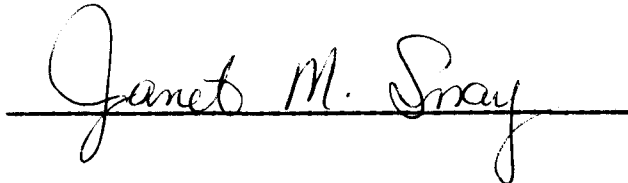
Ignazio A. Piedilato
600 Forest Avenue
Staten Island, NY 10310

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
9th day of January, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

January 9, 1987

Otto W. Behrens
720 Liberty Ave.
Staten Island, NY 10305

Dear Mr. Behrens:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Ignazio A. Piedilato
600 Forest Avenue
Staten Island, NY 10310

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
OTTO W. BEHRENS	:	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 September 1, 1979	:	
through August 31, 1982.	:	

Petitioner, Otto W. Behrens, 720 Liberty Avenue, Staten Island, New York 10305, 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 September 1, 1979 through August 31, 1982 (File No. 56220).

A hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1986 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Michael Infantino, Esq., of counsel).

ISSUE

Whether Otto W. Behrens is personally liable for sales taxes due from Tom'e Motors, Inc. for the period September 1, 1979 through August 31, 1982.

FINDINGS OF FACT

1. On March 31, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Otto W. Behrens, as officer of Tom'e Motors, Inc. ("the corporation"), for taxes due of \$23,570.64, plus penalty of \$5,829.66 and interest of \$9,741.14, for a total due of \$39,141.44. Said notice resulted from an audit of the corporation for the period September 1,

1979 through August 31, 1982. The audit was performed since no sales tax returns were filed by the corporation for the period at issue herein.

2. In his perfected petition, Otto W. Behrens (hereinafter "petitioner") stated that the Department of Taxation and Finance made an error "in stating that Otto Behrins [sic] was an officer of Tom E. Motors [sic] for the period in question."

3. The corporation was a used car dealership which operated in Staten Island, New York during the period at issue.

4. The corporation submitted a packet of documents to the Department of Motor Vehicles, Richmond District Office ("DMV") respecting the sale of the business to petitioner on July 1, 1979. Said packet included, inter alia, the following documents:

(a) A statement from one Thomas J. Scotto, president, wherein it was stated that "On June 25, 1979 the board of officers met and decided to sell this corporation [Tom'e Motors, Inc.] to Mr. Otto Behrens, 17 Liberty Ave Staten Island for the total sum of \$5,000." According to said statement, the date of sale was July 1, 1979.

(b) A letter from Mr. Scotto dated August 15, 1979, wherein it was stated that "as of July 1, 1979 I, Thomas J. Scotto, have sold all my interest in Tom'e Motors, Inc. This corporation was engaged in the sale of used autos. Please be further advised that this corporation has been sold to Mr. Otto Behrens, 17 Liberty Ave. Staten Island, N.Y."

(c) A DMV Dealer Record Card which indicated that the change of officers, wherein petitioner replaced Mr. Scotto, was approved September 26, 1979.

(d) Two (2) character reference letters, each dated September 19, 1979. These letters were required in order for the DMV to grant approval to the change of officers from Mr. Scotto to petitioner.

5. The Audit Division submitted three (3) DMV Signature Authorization forms for the corporation dated December 1, 1979, December 25, 1980 and December 15, 1981, respectively. Each of said forms bore petitioner's signature.

6. The Audit Division submitted a DMV Order of Suspension or Revocation, dated July 14, 1983, wherein it was stated that the licenses of the corporation were revoked. A copy of said order was mailed to petitioner.

7. The file contains a sales agreement which states that on August 15, 1979, petitioner sold his interest in the corporation to one Edward Steiger for one dollar. Said agreement was neither notarized nor filed with the DMV.

8. During the hearing, petitioner testified that he "had nothing to do with the business." He contended that he merely signed various forms as a favor to his grandson, Edward Steiger.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law places personal liability for the taxes imposed, collected or required to be collected under Article 28 upon "every person required to collect any tax" imposed by said article. Section 1131 (1) furnishes the following definition for the term "persons required to collect tax":

"'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel. Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."


B. That the record clearly shows that petitioner was the owner, as well as an officer, of the corporation during the entire period at issue herein. Accordingly, he was a person required to collect the sales tax at issue herein within the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law. Therefore, for the period at issue, petitioner is personally liable for the taxes assessed.

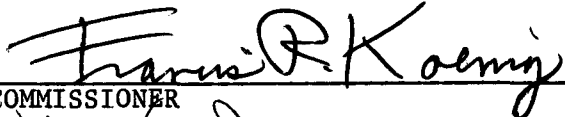
C. That the petition of Otto W. Behrens is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 31, 1984 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 09 1987.


PRESIDENT


COMMISSIONER


COMMISSIONER