

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Country-Wide Auto Sales Corp. : AFFIDAVIT OF MAILING

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 March 1, 1978 :
through August 31, 1981.

State of New York :

ss.:

County of Albany :

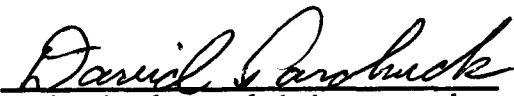
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 9th day of June, 1987, he/she served the within notice of decision by certified mail upon Country-Wide Auto Sales Corp. the petitioner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

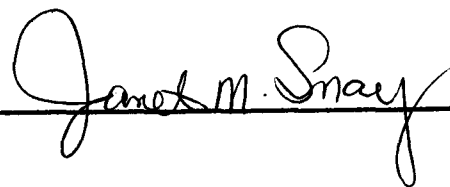
Country-Wide Auto Sales Corp.
5 Adam Place
Massapequa, New York 11758

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 June, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jacques & Joan Burger : AFFIDAVIT OF MAILING
as Officers of Country-Wide Auto Sales Corp.

for Revision of Determinations or for Refunds :
of Sales and Use Taxes under Articles 28 and :
29 of the Tax Law for the Period March 1, 1978 :
through August 31, 1981.

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 June, 1987, he/she served the within notice of decision by certified mail upon Jacques & Joan Burger, as Officers of Country-Wide Auto Sales Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jacques & Joan Burger
as Officers of Country-Wide Auto Sales Corp.
5 Adam Place
Massapequa, New York 11758

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.

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Sworn to before me this
9th day of June, 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
Country-Wide Auto Sales Corp. :

AFFIDAVIT OF MAILING

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 March 1, 1978 :
through August 31, 1981.

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 June, 1987, he served the within notice of decision by certified mail upon Martin M. Lehman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin M. Lehman
Rubin & Lehman
225 W. 34th Street, Room 1900
New York, NY 10001

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 June, 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 :
Jacques & Joan Burger : AFFIDAVIT OF MAILING
as Officers of Country-Wide Auto Sales Corp. :

for Revision of Determinations or for Refunds :
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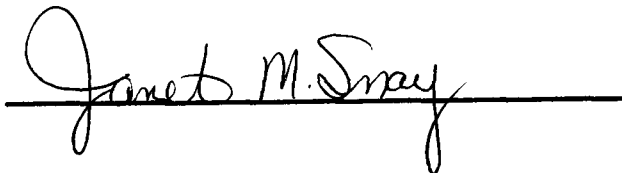
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New York, NY 10001

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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 June, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

June 9, 1987

Jacques & Joan Burger
as Officers of Country-Wide Auto Sales Corp.
5 Adam Place
Massapequa, New York 11758

Dear Mr. & Mrs. Burger:

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:
Martin M. Lehman
Rubin & Lehman
225 W. 34th Street, Room 1900
New York, NY 10001

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

June 9, 1987

Country-Wide Auto Sales Corp.
5 Adam Place
Massapequa, New York 11758

Gentlemen:

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

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cc: Taxing Bureau's Representative

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Martin M. Lehman
Rubin & Lehman
225 W. 34th Street, Room 1900
New York, NY 10001

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
COUNTRY-WIDE AUTO SALES CORP. :
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 March 1, 1978 :
through August 31, 1981. :

DECISION

In the Matter of the Petitions :
of :
JACQUES BURGER AND JOAN BURGER :
AS OFFICERS OF COUNTRY-WIDE AUTO SALES CORP. :
for Revision of Determinations or for Refunds :
of Sales and Use Taxes under Articles 28 and :
29 of the Tax Law for the Period March 1, 1978 :
through August 31, 1981. :

Petitioners, Country-Wide Auto Sales Corp., 5 Adam Place, Massapequa, New York 11758, and Jacques Burger and Joan Burger, as officers of Country-Wide Auto Sales Corp., 5 Adam Place, Massapequa, New York 11758, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1978 through August 31, 1981 (File Nos. 57687, 57688 and 57689).

On January 15, 1987, petitioners waived their right to a formal hearing and requested that the State Tax Commission render a decision based on the record contained in their files, with all briefs to be submitted by March 27, 1987. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUES

I. Whether the Audit Division properly determined the additional tax liability of petitioners for the period March 1, 1978 through August 31, 1981.

II. Whether section 1132(f) of the Tax Law relieves petitioners of the liability to collect and remit sales tax.

FINDINGS OF FACT

1. Petitioner Country-Wide Auto Sales Corp. (hereinafter "Country-Wide") was engaged in the business of buying and selling used automobiles. Country-Wide was a registered vendor for sales tax purposes; however, it did not file sales and use tax returns for the period at issue.

2. On August 20, 1984, the Audit Division, as the result of a field examination, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Country-Wide for the period March 1, 1978 through August 31, 1981. Said notice determined additional sales tax due of \$3,144.66, plus penalty of \$786.16 and interest of \$2,256.76, for a total amount due of \$6,187.58. On the same date, identical notices were issued to Jacques Burger as president of Country-Wide and to Joan Burger as secretary of Country-Wide. Petitioners Jacques Burger and Joan Burger do not protest their personal liability for any sales taxes which may be due from Country-Wide.

3. Country-Wide did not maintain adequate books and/or records during the period at issue. Moreover, no sales invoices were maintained indicating the selling price of automobiles sold by Country-Wide and, therefore, the Audit Division determined the selling price of said automobiles by referring to a used car selling guide known as the "Red Book". The Audit Division used average selling price (wholesale selling price plus retail selling price divided by 2) as a basis for computing taxable automobile sales of \$240,343.00. Application

of the 7 percent tax rate to audited taxable sales of \$240,343.00 produced a total tax of \$16,824.01. Country-Wide was allowed credit of \$1,464.00 for tax paid, thus resulting in additional tax due of \$15,360.01. Country-Wide, Jacques Burger and Joan Burger were each issued two notices of determination and demands for payment of sales and use taxes due. One of the notices assessed tax due of \$3,144.66 and is the subject of this proceeding. The other notice, dated August 4, 1981, assessed an estimated amount of \$30,000.00 which was subsequently reduced to \$12,215.35 (\$15,360.01 - 3,144.66). The notice dated August 4, 1981 is not at issue in this proceeding.

4. Petitioners maintain that, pursuant to section 1132(f) of the Tax Law, a motor vehicle cannot be registered with the New York State Department of Motor Vehicles until it is first proven that the applicable tax has been paid, and that, therefore, the collection from petitioners of sales or use tax would result in a double payment of tax. Petitioners also dispute the amount of additional tax due assessed by the Audit Division.

5. Petitioners have produced no evidence to warrant a reduction in the assessed amount of tax due or substantiate any claim that the amount as assessed is in error.

CONCLUSIONS OF LAW

A. That every person required to collect sales tax shall collect the tax from the customer when collecting the price to which it applies (Tax Law § 1132[a]). It shall be presumed that all receipts for tangible personal property are subject to tax until the contrary is established, and the burden of proving that any receipt is not taxable shall be upon the person required to collect tax, unless the vendor shall have taken from the purchaser a certificate to the effect that the property was for resale or for some reason exempt from tax (Tax

Law § 1132[c])). Furthermore, the receipts from the sale of a motor vehicle shall not be subject to the retail sales tax, despite the taking of physical possession by the purchaser within the State, provided that the purchaser, prior to taking delivery, furnishes to the vendor an affidavit that he is a nonresident, has no permanent place of abode in the State, and is not engaged in carrying on in the State any employment, trade, business or profession in which the motor vehicle will be used (Tax Law §§ 1117[a] and 1214[a]).

B. That Country-Wide was a person required to collect sales tax and since it did not receive from its customers resale certificates or nonresident affidavits, it was under a duty to collect New York State sales tax on its sales of automobiles. The fact that section 1132(f) of the Tax Law provides that a purchaser may not register a motor vehicle in New York until it is proven that the sales tax was paid, does not relieve Country-Wide of its duty and responsibility to collect the tax from said purchaser (Matter of Mendon Leasing Corporation, State Tax Commission, June 24, 1985).


C. That petitioners Jacques Burger and Joan Burger, as officers of Country-Wide, are personally liable for the sales tax due from the corporation (Tax Law § 1133[a]); and petitioners have failed to meet their burden of proving that the audit was otherwise erroneous.

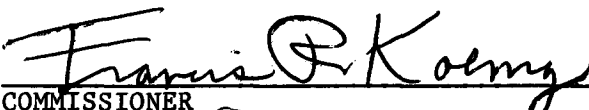
D. That the petitions of Country-Wide Auto Sales Corp., Jacques Burger and Joan Burger are denied in full and that the three notices of determination and demands for payment of sales and use taxes due dated August 20, 1984 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 09 1987


PRESIDENT


COMMISSIONER


COMMISSIONER