

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

VICTORIA SULLIVAN,  
A/K/A VICTORIA DIFORIO  
AS OFFICER OF IMPRESSIONS REPRODUCTIONS CORP.

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 December 1, 1977  
through November 30, 1979.

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Petitioner, Victoria Sullivan a/k/a Victoria DiForio, 153 Larchmont  
Avenue, Larchmont, New York 10538, filed a petition for revision of a determina-  
tion or for refund of sales and use taxes under Articles 28 and 29 of the Tax  
Law for the period December 1, 1977 through November 30, 1979 (File No. 57254).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the  
offices of the State Tax Commission, Two World Trade Center, New York, New  
York, on October 27, 1986 at 10:00 A.M. Petitioner appeared by Jones, Hirsch,  
Connors & Bull (Thomas G. Vaughan, Esq., of counsel). The Audit Division  
appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

#### ISSUE

Whether petitioner was a person required to collect tax on behalf of  
Impressions Reproductions Corp.

#### FINDINGS OF FACT

1. On September 12, 1984, the Audit Division issued a Notice of Determina-  
tion and Demand for Payment of Sales and Use Taxes Due to petitioner under the  
name Victoria DiForio, for \$21,147.61 in tax, \$4,162.16 in penalty, plus interest,

on the basis that petitioner was "liable individually and as officer of Impressions Reproductions Corp., under Sections 1131(1) and 1133 of the Tax Law".

2. **In** or about June 1975, Carl DiForio and Thomas Matthewson, both salesmen for Xerox Corp., Roland Long, a technician for Xerox Corp., and petitioner, a secretary, who was Carl DiForio's wife, formed Impressions Reproductions Corp. ("the corporation"). **All** left their former jobs and joined the corporation to work full time.

3. Petitioner was named secretary-treasurer of the corporation. Yr. DiForio Mr. Long and Mr. Matthewson were also officers. Each of the officers was issued 25 percent of the stock of the corporation.

4. The corporation operated a printing and copying business at 1990 Palmer Avenue, Larchmont, New York.

5. Petitioner served as receptionist, typist and clerk. **Her** duties consisted of typing letters and invoices, making job schedules and performing general office work. She was a signatory on the corporation's checking account, but signed checks only in emergency situations, e.g., C.O.D. shipments.

6. Carl DiForio signed almost all checks, including payroll checks, checks to suppliers and checks for taxes. All mail relating to finances and taxes was given to Mr. DiForio. He made most of the financial decisions for the corporation.

7. During the period at issue, all officers of the corporation were paid the same amount, \$170.00 per week.

8. The business was not financially successful and ultimately failed. The Westchester County Sheriff seized the business assets in 1979 or 1980.

9. Petitioner and Carl DiForio had been married in 1969. Carl DiForio stopped living with petitioner shortly after the business was formed in June 1975. They were subsequently divorced in 1980.

CONCLUSIONS OF LAW

A. That Tax Law § 1133(a) provides that every person required to collect any tax imposed by Article 28 of the Tax Law shall be personally liable for the tax imposed, collected or required to be collected thereunder.

B. That during the period at issue, Tax Law § 1131(1) provided as follows:

"(1) '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."

C. That petitioner was not a person required to collect tax on behalf of Impressions Reproductions Corp. within the meaning of Tax Law §§ 1133(a) and 1131(1). While petitioner was nominally secretary-treasurer of the corporation, she was in fact merely an office worker and had no control over the financial affairs of the corporation.

D. That the petition of Victoria Sullivan a/k/a Victoria DiForio is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 12, 1984 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987

  
PRESIDENT

