

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| Manford A. Place | : | |
| d/b/a Cambridge Enterprises | : | AFFIDAVIT OF MAILING |
| for Redetermination of a Deficiency or a Revision | : | |
| of a Determination or a Refund of Sales & Use Tax | : | |
| under Article 28 & 29 of the Tax Law for the Period | : | |
| 6/1/74-5/31/77. | : | |

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon Manford A. Place d/b/a Cambridge Enterprises, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Manford A. Place
d/b/a Cambridge Enterprises
Box 302, 108 Sylvan Ave.
Elbridge, NY 13060

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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 February, 1983.

David Parchuck

Annice A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| Manford A. Place | : | |
| d/b/a Cambridge Enterprises | : | AFFIDAVIT OF MAILING |
| for Redetermination of a Deficiency or a Revision | : | |
| of a Determination or a Refund of Sales & Use Tax | : | |
| under Article 28 & 29 of the Tax Law for the | : | |
| Period 6/1/74-5/31/77. | : | |

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon James Stafford the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James Stafford
Stafford & O'Connor
Box 236
Weedsport, NY 13166

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
4th day of February, 1983.

David Parchuck

James A. Highland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 4, 1983

Manford A. Place
d/b/a Cambridge Enterprises
Box 302, 108 Sylvan Ave.
Elbridge, NY 13060

Dear Mr. Place:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James Stafford
Stafford & O'Connor
Box 236
Weedsport, NY 13166
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| MANFORD A. PLACE | : | DECISION |
| d/b/a CAMBRIDGE ENTERPRISES | : | |
| 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 June 1, 1974 | : | |
| through May 31, 1977. | : | |

Petitioner, Manford A. Place, d/b/a Cambridge Enterprises, Box 302, 108 Sylvan Avenue, Elbridge, New York 13060, 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 June 1, 1974 through May 31, 1977 (File No. 21149).

On October 26, 1981, the petitioner advised the State Tax Commission, in writing, that it desired to waive a small claims hearing and submitted the case to the State Tax Commission based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUES

I. Whether petitioner's purchase of the assets of Walser Granite Corporation constituted a bulk sale in accordance with section 1141(c) of the Tax Law, and if so,

II. Whether petitioner is liable for taxes determined due from the seller.

FINDINGS OF FACT

1. On April 12, 1977, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk from petitioner, Manford Place d/b/a Cambridge Enterprises regarding the purchase of the assets of Walser Granite Corporation, a monument dealer. Said notification indicated April 15, 1977 as the scheduled

date of sale and listed the total sales price as \$72,000.00. The sales price of the furniture and fixtures was \$1,000.00. The amount of the escrow fund was \$500.00.

2. On April 13, 1977, the Audit Division notified petitioner of a possible claim for New York State and local sales and use taxes due from the seller. The notification stated that no distribution of funds or property to the extent of the amount of the State's claim may be made before the following conditions have been met:

- 1) The State Tax Commission has determined the seller's liability, if any.
- 2) Payment of such liability has been made to the State.
- 3) This office has authorized you to release the funds or property.

3. On September 12, 1977, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner for taxes due of \$10,286.53.

An audit of the seller's books and records disclosed additional taxes due for the period June 1, 1974 through May 31, 1977. Petitioner was held liable for the taxes determined due from the seller pursuant to section 1141(c) of the Tax Law.

4. Petitioner executed an Offer to Purchase on March 9, 1977 wherein he agreed to purchase the Walser Granite Corporation for \$72,000.00. Said offer provided that the sales price included the name "Walser", real estate, the furnishings, a customer list and a 1975 Ford lift truck. On April 27, 1977 the

Board of Directors of Walser Granite Corporation passed a resolution to sell all of its business assets.

The transfer to petitioner was consummated on or about May 2, 1977.

5. In its perfected petition, petitioner stated that \$9,002.18 was placed in escrow with the seller's attorney; that the Sales Tax Bureau failed to file a lien; and, that upon information and belief, the money was used to pay other bills.

CONCLUSIONS OF LAW

A. That the real estate, personal property and business name of Walser Granite Corporation were business assets and that the sale thereof constituted a bulk sale within the meaning and intent of section 1141(c) of the Tax Law.

B. That section 1141(c) of the Tax Law provides, in part, that the "purchaser...is forbidden to transfer to the seller...any such sums of money...to the extent of the amount of the state's claim."

C. That the Tax Commission notified petitioner of the amount of taxes due from the seller within 180 days (90 days effective January 1, 1978) of receipt of petitioner's notice of bulk sale as required by section 1141(c) of the Tax Law.

That petitioner failed to comply with the provisions of section 1141(c) of the Tax Law and for such failure, is personally liable for the payment of the taxes determined due from the seller as provided in said section of the Tax Law.

D. That the petition of Manford Place d/b/a Cambridge Enterprises is denied and the Notice and Demand for Payment of Sales and Use Taxes Due issued September 12, 1977 is sustained.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER