

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Joseph P. D'Angelo	:	
for Redetermination of a Deficiency or for Refund	:	AFFIDAVIT OF MAILING
of Personal Income Tax under Article 22 of the Tax	:	
Law for the Years 1968, 1969 and 1970.	:	

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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Joseph P. D'Angelo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph P. D'Angelo
810 Abbott Rd.
Buffalo, NY 14220

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
18th day of January, 1984.

David Parchuck

James A. [Signature]
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph P. D'Angelo :
AFFIDAVIT OF MAILING
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Periods December 1, 1968 through :
February 28, 1970 and June 1, 1970 through :
August 31, 1970. :

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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Joseph P. D'Angelo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

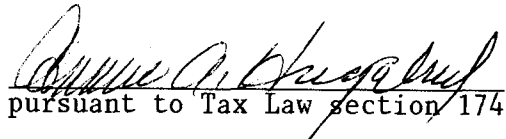
Joseph P. D'Angelo
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Sworn to before me this
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Joseph P. D'Angelo
810 Abbott Rd.
Buffalo, NY 14220

Dear Mr. D'Angelo:

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) 690 & 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	:	
	:	
JOSEPH P. D'ANGELO	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1968, 1969 and	:	
1970.	:	

Petitioner, Joseph P. D'Angelo, P.O. Box 54-6251, Miami, Florida 33154, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970 (File No. 29286).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 20, 1983 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner filed a timely petition for redetermination or for refund of the taxes in issue within the meaning and intent of section 689(b) of the Tax Law.

FINDINGS OF FACT

1. On November 29, 1971, the Audit Division issued a Notice of Deficiency, along with a Statement of Deficiency, asserting a penalty pursuant to section 685(g) of the Tax Law against petitioner as a person required to collect, truthfully account for and pay over withholding taxes of Marine Lithograph Corporation ("Marine") in the amount of \$1,132.00 for the years 1968, 1969 and

1970. On January 31, 1972, the Audit Division issued another notice asserting a 685(g) penalty against petitioner as a person required to collect, truthfully account for and pay over withholding taxes of Tycodyne Industries Corporation ("Tycodyne") in the amount of \$2,426.40 for the year 1969. On March 20, 1972, the Audit Division issued another notice asserting a 685(g) penalty against petitioner with respect to withholding taxes of Tycodyne in the amount of \$304.00 for the year 1970.

2. No evidence was introduced indicating that petitioner filed a petition or any form of protest against the aforesaid notices within 90 days of their issuance. Petitioner submitted a copy of a petition filed on March 9, 1977; however, said petition concerned an unrelated matter. Petitioner also submitted an affidavit from his attorney alleging that the attorney filed a petition in a tax matter sometime in 1971 or 1972. The evidence indicates, however, that petitioner was involved in numerous tax matters with the Department of Taxation and Finance for the years 1965 through 1973 and it is impossible to determine whether the petition alluded to by petitioner's attorney concerned the notices in issue in the present case.

3. On August 3, 1972 and September 21, 1972, the Audit Division filed warrants with the County Clerk of Erie County with respect to the aforesaid notices. Petitioner filed a New York State income tax return for 1971 but did not remit \$976.70 of the taxes due thereon.¹ On February 22, 1973, the Audit Division filed a warrant for said taxes with the Clerk of the County of Erie in the amount of \$976.70, plus penalty and interest of \$77.87, for a total due of \$1,054.57. On March 2, 1973, the Audit Division received a check from petitioner

¹ No tax return for 1971 was placed into evidence by petitioner or the Audit Division.

in the amount of \$1,013.21 in payment of the aforesaid income taxes. Petitioner made a subsequent payment of \$31.59 for penalty and interest due on his 1971 income tax. The balance due of \$9.77 was waived on March 26, 1973 and the warrant filed February 22, 1973 was returned wholly satisfied.

4. Petitioner filed two claims for refund dated November 27, 1976. One claim was in the amount of \$1,054.57 for the 1971 income taxes paid on March 2, 1973 and thereafter. The second refund claim was in the amount of \$9,143.91 for sales tax payments made from June 7, 1971 through March 13, 1974. The Audit Division, by letter dated April 22, 1980, denied petitioner's claim for refund of sales tax in full. Petitioner stipulated that the claim for refund of income tax was not in issue.

5. It is the Audit Division's position that, with respect to the 685(g) penalties for unpaid withholding taxes, petitioner did not request a hearing within 90 days pursuant to section 689(b) of the Tax Law, nor did he make any payments on said taxes for which a claim for refund could be made, and therefore no jurisdiction exists for the Tax Commission to conduct a hearing in the instant case.

6. Petitioner had instituted an action in the United States District Court for the Western District of New York for refund of penalties for unpaid Federal withholding taxes with respect to Tycodyne and Marine, as well as Acrydyne Laboratories, Inc. for the years 1969, 1970 and 1971. Following a jury trial finding that petitioner was not personally liable for said taxes, judgment was entered for petitioner on April 13, 1981. Other than evidence of said judgment, petitioner was unprepared to proceed on the merits of his case at the hearing. It was agreed by all parties to proceed on the jurisdictional

issues only and, if petitioner prevailed on said issues, to refer the matter for further proceedings on the substantive issues.

CONCLUSIONS OF LAW

A. That section 689(b) of the Tax Law provides, in part, that within ninety days after the mailing of a Notice of Deficiency of income tax, a taxpayer may file a petition with the Tax Commission for a redetermination of the deficiency.

B. That, inasmuch as there is no evidence in the record of any petition filed regarding the notices in issue, and since the affidavit of petitioner's attorney is vague as to whether a petition related to said notices was timely filed, petitioner has not met his burden of proving that a timely petition was filed. Since petitioner filed neither a timely petition nor a claim for refund, he is not entitled to a hearing on said taxes.

C. That, in light of Conclusion of Law "B", it is unnecessary to conduct further proceedings on the substantive issues of petitioner's case.

D. That the petition of Joseph P. D'Angelo is denied and the notices of deficiency issued November 29, 1971, January 31, 1972 and March 20, 1972 are sustained.

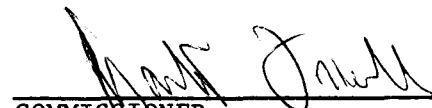
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH P. D'ANGELO	:	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 Periods December 1, 1968	:	
through February 28, 1970 and June 1, 1970	:	
through August 31, 1970.	:	

Petitioner, Joseph P. D'Angelo, P.O. Box 54-6251, Miami, Florida 33154, 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 periods December 1, 1968 through February 28, 1970 and June 1, 1970 through August 31, 1970 (File No. 29286).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 20, 1983 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner filed timely claims for refund of sales tax due within the meaning and intent of section 1139(a) of the Tax Law.

FINDINGS OF FACT

1. On March 4, 1971, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner, Dr. Joseph P. D'Angelo, and Raymond C. Dean, officers of Marine Lithograph Corporation ("Marine") in the amount of \$213.05, plus penalty and interest of \$47.72, for a total due of \$260.77 for the periods March 1, 1969 through May 31, 1969 and December 1, 1969

through February 28, 1970. On March 8, 1971, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against the aforesaid individuals as officers of Tycodyne Industries Corporation ("Tycodyne") in the amount of \$7,566.98, plus penalty and interest of \$1,425.60, for a total due of \$8,992.58 for the periods December 1, 1968 through February 28, 1969, June 1, 1969 through November 30, 1969, and June 1, 1970 through August 31, 1970. Petitioner's liability in both cases was based on his being a person required to collect sales taxes as an officer of the aforementioned corporations.

2. No evidence was introduced indicating that petitioner filed a petition or any form of protest against the aforesaid notices. Petitioner submitted a copy of a petition filed on March 9, 1977; however, said petition concerned an unrelated matter. Petitioner also submitted an affidavit from his attorney alleging that the attorney filed a petition in a tax matter sometime in 1971 or 1972. The evidence indicates, however, that petitioner was involved in numerous tax matters with the Department of Taxation and Finance for the years 1965 through 1973 and it is impossible to determine whether the petition alluded to by petitioner's attorney concerned the notices in issue in the present case.

3. On April 29, 1971, the Audit Division filed warrants with the County Clerk of Erie County with respect to the aforesaid notices. Payments totalling \$9,062.84 were received with respect to the Notice and Demand issued March 8, 1971 for sales taxes due from Tycodyne as follows:

6/07/71	\$ 74.49	bank levy
8/02/72	7,988.35	court-ordered sale of stock
12/03/73	500.00	payment by Tycodyne
3/13/74	500.00	payment by Tycodyne
	<u>\$9,062.84</u>	

The remaining balance of \$81.67 due on said notice was waived and the warrant was returned wholly satisfied on December 30, 1975.

4. Petitioner filed two claims for refund dated November 27, 1976. One claim was in the amount of \$1,054.57 for 1971 income taxes paid on March 2, 1973 and thereafter. The second refund claim was in the amount of \$9,143.91 for the sales tax payments made from June 7, 1971 through March 13, 1974. The Audit Division, by letter dated April 22, 1980, denied petitioner's claim for refund of sales tax in full. Petitioner stipulated that the claim for refund of income tax was not in issue.

5. It is the Audit Division's position that, with respect to petitioner's claim for refund of sales tax in the amount of \$9,143.91, said claim was not filed within three years after the date when the tax was payable, and therefore was not timely and was properly denied.

6. Petitioner had instituted an action in the United States District Court for the Western District of New York for refund of penalties for unpaid Federal withholding taxes with respect to Tycodyne and Marine, as well as Acrydyne Laboratories, Inc. for the years 1969, 1970 and 1971. Following a jury trial finding that petitioner was not personally liable for said taxes, judgment was entered for petitioner on April 13, 1981. Other than evidence of said judgment, petitioner was unprepared to proceed on the merits of his case at the hearing. It was agreed by all parties to proceed on the jurisdictional issues only and, if petitioner prevailed on said issues, to refer the matter for further proceedings on the substantive issues.

CONCLUSIONS OF LAW

A. That section 1139(a) of the Tax Law provides, in part, that an application for a refund of sales tax erroneously, illegally or unconstitutionally

collected or paid may be filed within three years from the date on which the tax was payable to the Tax Commission. Inasmuch as the tax in issue herein was payable during the period 1968 through 1970, petitioner's claim for refund on November 27, 1976 was made six to eight years from the date the tax was payable and was, therefore, clearly outside the three year statute of limitations for refund claims. The fact that petitioner paid part of the sales tax due and filed a claim for refund one year later is of no consequence since there is no provision under Article 28 of the Tax Law for such a procedure once the original three year period for filing a claim for refund has expired.

B. That in light of Conclusion of Law "A", it is unnecessary to conduct further proceedings on the substantive issues of petitioner's case.

C. That the petition of Joseph P. D'Angelo is denied and the denial of refund issued April 22, 1980 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-36 (9/76)

State of New York - Department of Taxation and Finance
Tax Appeals BureauREQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 2/7/84
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition F - Dec. 1/18/84
Name Joseph P. D'Angela	
Address 810 Abbott Rd. Buffalo, N.Y. 14220	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by D.P.	Section	Date of Search 2/7/84
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

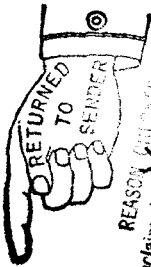
STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



REASON FOR RETURN

Unclaimed ☒

Addressee unknown ☐

Insufficient Address ☐

No such street number ☐

No such office in state ☐

Do not remail in this envelope ☐

Joseph P. D'Angelo
810 Abbott Rd.
Buffalo, NY 14220



CLAIM CHECK
NO.

42168
89124
HOLD

DATE

1-20-84
1ST NOTICE

2ND NOTICE

2-7
RETURN

Original
OK 1980

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

January 18, 1984

Joseph P. D'Angelo
810 Abbott Rd.
Buffalo, NY 14220

Dear Mr. D'Angelo:

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) 690 & 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	:	
	:	
JOSEPH P. D'ANGELO	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1968, 1969 and	:	
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Petitioner, Joseph P. D'Angelo, P.O. Box 54-6251, Miami, Florida 33154, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970 (File No. 29286).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 20, 1983 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

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FINDINGS OF FACT

1. On November 29, 1971, the Audit Division issued a Notice of Deficiency, along with a Statement of Deficiency, asserting a penalty pursuant to section 685(g) of the Tax Law against petitioner as a person required to collect, truthfully account for and pay over withholding taxes of Marine Lithograph Corporation ("Marine") in the amount of \$1,132.00 for the years 1968, 1969 and

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2. No evidence was introduced indicating that petitioner filed a petition or any form of protest against the aforesaid notices within 90 days of their issuance. Petitioner submitted a copy of a petition filed on March 9, 1977; however, said petition concerned an unrelated matter. Petitioner also submitted an affidavit from his attorney alleging that the attorney filed a petition in a tax matter sometime in 1971 or 1972. The evidence indicates, however, that petitioner was involved in numerous tax matters with the Department of Taxation and Finance for the years 1965 through 1973 and it is impossible to determine whether the petition alluded to by petitioner's attorney concerned the notices in issue in the present case.

3. On August 3, 1972 and September 21, 1972, the Audit Division filed warrants with the County Clerk of Erie County with respect to the aforesaid notices. Petitioner filed a New York State income tax return for 1971 but did not remit \$976.70 of the taxes due thereon.¹ On February 22, 1973, the Audit Division filed a warrant for said taxes with the Clerk of the County of Erie in the amount of \$976.70, plus penalty and interest of \$77.87, for a total due of \$1,054.57. On March 2, 1973, the Audit Division received a check from petitioner

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5. It is the Audit Division's position that, with respect to the 685(g) penalties for unpaid withholding taxes, petitioner did not request a hearing within 90 days pursuant to section 689(b) of the Tax Law, nor did he make any payments on said taxes for which a claim for refund could be made, and therefore no jurisdiction exists for the Tax Commission to conduct a hearing in the instant case.

6. Petitioner had instituted an action in the United States District Court for the Western District of New York for refund of penalties for unpaid Federal withholding taxes with respect to Tycodyne and Marine, as well as Acrydyne Laboratories, Inc. for the years 1969, 1970 and 1971. Following a jury trial finding that petitioner was not personally liable for said taxes, judgment was entered for petitioner on April 13, 1981. Other than evidence of said judgment, petitioner was unprepared to proceed on the merits of his case at the hearing. It was agreed by all parties to proceed on the jurisdictional

issues only and, if petitioner prevailed on said issues, to refer the matter for further proceedings on the substantive issues.

CONCLUSIONS OF LAW

A. That section 689(b) of the Tax Law provides, in part, that within ninety days after the mailing of a Notice of Deficiency of income tax, a taxpayer may file a petition with the Tax Commission for a redetermination of the deficiency.

B. That, inasmuch as there is no evidence in the record of any petition filed regarding the notices in issue, and since the affidavit of petitioner's attorney is vague as to whether a petition related to said notices was timely filed, petitioner has not met his burden of proving that a timely petition was filed. Since petitioner filed neither a timely petition nor a claim for refund, he is not entitled to a hearing on said taxes.

C. That, in light of Conclusion of Law "B", it is unnecessary to conduct further proceedings on the substantive issues of petitioner's case.

D. That the petition of Joseph P. D'Angelo is denied and the notices of deficiency issued November 29, 1971, January 31, 1972 and March 20, 1972 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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of	:	
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JOSEPH P. D'ANGELO	:	DECISION
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for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
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ISSUE

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FINDINGS OF FACT

1. On March 4, 1971, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner, Dr. Joseph P. D'Angelo, and Raymond C. Dean, officers of Marine Lithograph Corporation ("Marine") in the amount of \$213.05, plus penalty and interest of \$47.72, for a total due of \$260.77 for the periods March 1, 1969 through May 31, 1969 and December 1, 1969

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The remaining balance of \$81.67 due on said notice was waived and the warrant was returned wholly satisfied on December 30, 1975.

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5. It is the Audit Division's position that, with respect to petitioner's claim for refund of sales tax in the amount of \$9,143.91, said claim was not filed within three years after the date when the tax was payable, and therefore was not timely and was properly denied.

6. Petitioner had instituted an action in the United States District Court for the Western District of New York for refund of penalties for unpaid Federal withholding taxes with respect to Tycodyne and Marine, as well as Acrydyne Laboratories, Inc. for the years 1969, 1970 and 1971. Following a jury trial finding that petitioner was not personally liable for said taxes, judgment was entered for petitioner on April 13, 1981. Other than evidence of said judgment, petitioner was unprepared to proceed on the merits of his case at the hearing. It was agreed by all parties to proceed on the jurisdictional issues only and, if petitioner prevailed on said issues, to refer the matter for further proceedings on the substantive issues.

CONCLUSIONS OF LAW

A. That section 1139(a) of the Tax Law provides, in part, that an application for a refund of sales tax erroneously, illegally or unconstitutionally

collected or paid may be filed within three years from the date on which the tax was payable to the Tax Commission. Inasmuch as the tax in issue herein was payable during the period 1968 through 1970, petitioner's claim for refund on November 27, 1976 was made six to eight years from the date the tax was payable and was, therefore, clearly outside the three year statute of limitations for refund claims. The fact that petitioner paid part of the sales tax due and filed a claim for refund one year later is of no consequence since there is no provision under Article 28 of the Tax Law for such a procedure once the original three year period for filing a claim for refund has expired.


B. That in light of Conclusion of Law "A", it is unnecessary to conduct further proceedings on the substantive issues of petitioner's case.

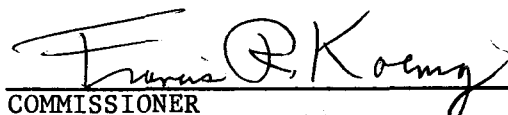
C. That the petition of Joseph P. D'Angelo is denied and the denial of refund issued April 22, 1980 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER