

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX COHEN

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period Nov. 30, 1969  
through June 30, 1970.

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 20th day of August , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Max Cohen

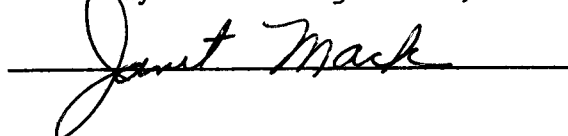
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Max Cohen  
136-70 Roosevelt Avenue  
Flushing, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

20th day of August , 1974

  
Janet Mack

  
Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX COHEN

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: AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
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For a Redetermination of a Deficiency or  
a Refund of Sales & Use :  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period Nov. 30, 1969  
through June 30, 1970.

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 20th day of August , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Hyman Herman, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Hyman Herman, Esq.

261 Broadway  
New York, New York 10007

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

20th day of August , 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**Dated:** Albany, New York

**August 20, 1974**

**Mr. Max Cohen**  
**136-70 Roosevelt Avenue**  
**Flushing, New York**

**Dear Mr. Cohen:**

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 & 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 Months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Nigel G. Wright**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
MAX COHEN	:	DETERMINATION
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 November 30, 1969 through	:	
June 30, 1970.	:	

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Applicant, Max Cohen, has filed an application 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 November 30, 1969 through June 30, 1970.

A hearing was duly held on December 11, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The applicant was represented by Hyman Herman, Esq. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is whether the sale of fixtures and equipment to applicant, Max Cohen, was a bulk transfer under section 1141(c) of the Tax Law.

#### FINDINGS OF FACT

1. On July 1, 1970, the seller, Slax & Tops, Inc., filed a notification of sale, transfer or assignment in bulk with the Sales

Tax Bureau naming applicant, Max Cohen, as the purchaser of certain fixtures and equipment located at 136-66 Roosevelt Avenue, Flushing, New York

2. A Notice of Determination of sales and use taxes (and penalties) due from Slax & Tops, Inc. for the period November 30, 1969 through June 29, 1970, was issued on November 20, 1970, against applicant, Max Cohen, under File No. 90,765,213.

3. On June 29, 1970, applicant, Max Cohen had entered into an agreement whereby he was to purchase certain fixtures and equipment from Slax & Tops, Inc.

4. Applicant, Max Cohen, remitted \$228.00, representing the sales tax due on the aforesaid transaction, to the transferor, Slax & Tops, Inc., who in turn remitted same to the Sales Tax Bureau.

5. The aforesaid sale involved the transfer of show cases, hangers, cabinets, lighting fixtures and a cash register in connection with the buying up of a lease under which the transferor, Slax & Tops, Inc. operated. At the time of said transfer, Slax & Tops, Inc. was not operating its business at 136-68 Roosevelt Avenue, Flushing, New York. Applicant, Max Cohen, operated a similar business next door at 136-70 Roosevelt Avenue, Flushing, New York.

#### CONCLUSIONS OF LAW

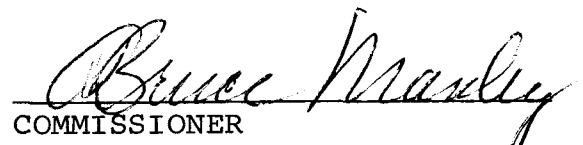
A. That the sale of fixtures and equipment to applicant, Max Cohen, was a sale transfer or assignment in bulk of a part of business assets, otherwise than in the ordinary course of business under section 1141(c) of the Tax Law.

B. That the application of Max Cohen is hereby denied and the Notice of Determination of sales and use taxes due issued on November 20, 1970 is sustained.

DATED: Albany, New York  
August 20, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER