

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD L. NEZELEK, INC.

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 ended :
August 31, 1968

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

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 1st day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Edward L. Nezelek, Inc.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Edward L. Nezelek, Inc.

76 Pratt Avenue
Johnson City, New York 13790

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

1st day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD L. NEZELEK, INC.

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 ended :
August 31, 1968

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 1st day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Gordon Wood

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Gordon Wood
3613 Alameda Lane
Endwell, 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

1st day of August , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 1, 1972

Edward L. Meselek, Inc.
76 Pratt Avenue
Johnson City, New York 13790

Gentlemen:

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,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

File Copy

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
EDWARD L. NEZELEK, INC. : 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 ended August 31, 1968.

Edward L. Nezelek, Inc. applied for a revision of a
determination of sales and use taxes under Articles 28 and 29 of
the Tax Law for the period ended August 31, 1968.

A formal hearing was held at the offices of the State Tax
Commission, Binghamton, New York, on September 14, 1971, before
L. Robert Leisner, Hearing Officer. The taxpayer was represented
by its officer, Gordon Wood, and the Income Tax Bureau was represented
by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Where a purchaser issued a \$60,000.00 purchase order specifying
a purchase price "to include 5% sales and use taxes" to an out-of-
state vendor, but paid a \$60,000.00 invoice for merchandise with no
tax listed, is the purchaser liable for a use tax?

FINDINGS OF FACT

1. Applicant, Edward L. Nezelek, Inc., timely filed a New
York sales tax return for the period involved.
2. A Notice of Determination and Demand for the payment of
sales tax for the period ended August 31, 1968 was issued on
January 11, 1971, against the taxpayer under File No. 90,744,246.

3. The taxpayer applied for redetermination of the deficiencies.
4. The purchase order was addressed to Glidorama Division, Whizzer Industries, Inc., 2240 Greer Street, Keego Harbor, Michigan.
5. The purchase order states:

"Furnish and deliver all materials as shown and specified in Section GC-9, Para. GC-9.2, 'Aluminum Sliding Windows' including addenda 1, 2, 3 and 4, as prepared by Tallman & Tallman, architects, Ithaca, New York, with no exclusions, F.O.B. job site for the sum of Sixty Thousand and No/100 Dollars (\$60,000.00), which sum includes 5% sales and use taxes."
6. The Glidorama Company shipped the merchandise to the taxpayer and invoiced it for \$60,000.00 and no tax was stated on the invoice. The purchaser accepted and paid the \$60,000.00 invoice for the merchandise which had no tax listed on it.
7. The Glidorama Company did not have a sales tax registration number, and it did not collect or pay any sales tax as such on this sale and it did not forward any money to New York State.
8. Subsequently the purchaser tried to contact the Glidorama Company but it was out of business and its phones disconnected.
9. The purchaser has an excellent record of complying with its sales tax obligations.

CONCLUSIONS OF LAW

- A. The purchaser acted in good faith with respect to its sales tax obligations.
- B. While the purchaser argues that its purchase order says that the \$60,000.00 bid price specifies that the "sum includes 5% sales and use tax", the evidence is that the purchaser paid \$60,000.00 for merchandise to the out-of-state vendor, and the purchaser did not

pay any tax to the vendor. The vendor did not list, collect or pay over any sales tax. Under these circumstances the purchaser is liable for a 5% use tax.

B. The determination of the deficiency is sustained. The penalty is cancelled.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

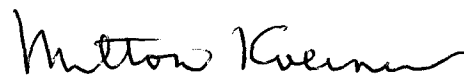
DATED: Albany, New York

August 1, 1972.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER