

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

D. N. GAZDER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year ~~(x) or Period(s)~~ 1975. :

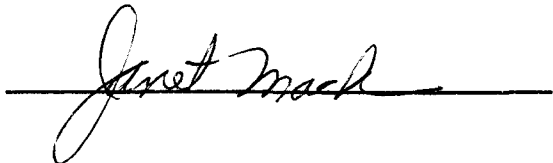
State of New York
County of Albany

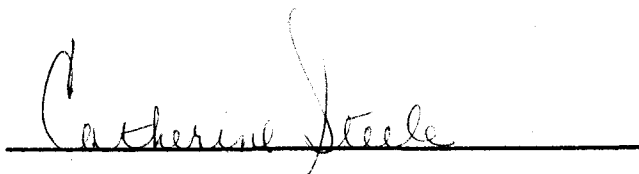
Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of November, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon D. N. Gazder ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:
Mr. D. N. Gazder
c/o Air India
West Wing Building, 3rd Floor
John F. Kennedy Airport
Jamaica, New York 11430
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

30th day of November, 1976







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 30, 1976

TELEPHONE: (518) **457-3850**

Mr. D. N. Gazder
c/o Air India
West Wing Building, 3rd Floor
John F. Kennedy Airport
Jamaica, New York 11430

Dear Mr. Gazder:

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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
D. N. GAZDER	:	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	:	
Year 1975.	:	

Applicant, D. N. Gazder, c/o Air India, West Wing Building, 3rd Floor, John F. Kennedy Airport, Jamaica, New York 11430, 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 year 1975. (Application No. 6275).

A small claims hearing was held June 10, 1976, at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. The applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Is the purchase of tangible personal property from an out-of-state vendor subject to New York sales tax when the property is delivered to New York and then subsequently shipped to a foreign country by the purchaser.

FINDINGS OF FACT

1. Applicant, D. N. Gazder, was an employee of Air India at John F. Kennedy Airport in New York. In order to oblige a friend in India, applicant, D. N. Gazder, purchased a diamond grader and accessories for this friend from a vendor in Los Angeles, California. The property was shipped by the vendor to J. F. Kennedy Airport, c/o D. N. Gazder in two containers. When the first container arrived,

it was held in the Air India baggage room. Applicant, D. N. Gazder, consigned the container to his wife's personal luggage that same day. Mrs. Gazder was traveling as a passenger to India. The second container arrived two weeks later and was consigned to a friend's personal luggage in a similar manner. The purpose of this shipping arrangement was to save freight charges for applicant's friend in India.

2. Applicant, D. N. Gazder, paid for the property upon receipt of the invoice from the vendor. He also paid \$48.32 sales tax which was included in the invoice. On March 17, 1975, applicant, D. N. Gazder, filed an application for refund of the \$48.32 sales tax paid. Applicant, D.N. Gazder, contended that he never had possession of the property and that the property was not retained or resold in New York and, therefore, was exempt from New York sales and use taxes. Applicant, D. N. Gazder's claim for refund was denied on April 22, 1975, by the Sales Tax Bureau.

CONCLUSIONS OF LAW

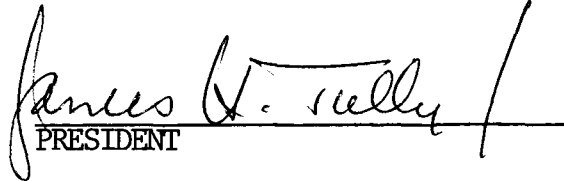
A. That the tangible personal property purchased from an out-of-state vendor was delivered to New York and, applicant, D. N. Gazder, gained control and possession of said property when so delivered. Therefore, a sale had been made in accordance with section 1101(b)(5) of the Tax Law.

B. That the sale of tangible personal property was a retail sale in accordance with section 1101(b)(4) of the Tax Law which was taxable in accordance with section 1105(a) of the Tax Law.

C. That applicant, D. N. Gazder's claim for refund of \$48.32 sales tax paid is denied and the Notice of Refund Denial is sustained.

DATED: Albany, New York
November 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER