

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HAWTHORNE DISTRIBUTOR, INC. :

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 August 1, 1965  
through February 10, 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 29th day of October , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Hawthorne Distributor, Inc. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Hawthorne Distributor, Inc.  
238 Rockaway Avenue  
Valley Stream, L.I., 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

29th day of October , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HAWTHORNE DISTRIBUTOR, INC.

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 August 1, 1965  
through February 10, 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 29th day of October , 19 71, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Julius A.

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

277 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

29th day of October , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
on behalf of	:	
HAWTHORNE DISTRIBUTOR INC.	:	DETERMINATION
	:	ON
for a Revision of a Determination or	:	TIMELINESS
for Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the period August 1, 1965 through	:	
February 10, 1968.	:	

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An application on behalf of Hawthorne Distributor Inc., a registered vendor, was filed 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 August 1, 1965 through February 10, 1968. A formal hearing was held before Lawrence A. Newman, Hearing Officer, at the offices of the State Tax Commission, in the City of New York on February 23, 1971. Julius Silberbush, Esq., escrowee of the vendor, appeared and testified. The Sales Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Whether an application, on behalf of the vendor for revision of the determination, was timely filed.

FINDINGS OF FACT

1. On February 10, 1968, the applicant, Hawthorne Distributor Inc., purchased business assets from Eden's Drug Store, Inc.
2. On June 19, 1968, the Sales Tax Bureau received a notification of the sale, transfer or assignment in bulk (on Form ST-274) which was signed by Sophie Minichiello, as an officer of Eden's Drug Store, Inc.

3. On June 19, 1969, the Sales Tax Bureau issued Notice of Determination and demand numbered 90,130,701 in the amount of \$2,048.63, plus interest, against Hawthorne Distributor, Inc.

4. An application for a hearing was not filed by or on behalf of Hawthorne Distributor Inc., within 90 days from the date of the Notice of Determination.

5. On June 2, 1970, August 28, 1970 and December 15, 1970, Julius Silberbush, Esq., as escrowee of the vendor, made written inquiries with the Department concerning the status of this matter, and indicating the vendor's protest.

DETERMINATION

A. The determination in issue is final since an application for a hearing was not timely filed.

DATED: Albany, New York  
*October 28, 1971*

STATE TAX COMMISSION

*Norman Gallman*  
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COMMISSIONER

*Russ Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kremer*  
\_\_\_\_\_  
COMMISSIONER