

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PARKER MERCHANDISING CORP.
D/b/A PARKER DISTRIBUTORS

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(~~s~~) or Period(~~s~~)
March 1, 1973 through February 28, 1976.

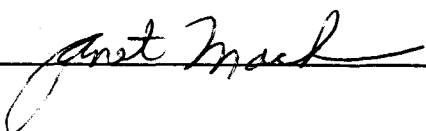
State of New York
County of Albany

John Huhn, 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 25 day of November, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Parker Merchandising
Corp., D/B/A Parker Distributors
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Parker Merchandising Corp
d/b/a Parker Distributors
RD 2, Robinson Lane
Wappinger Falls, New York 12590
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)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

25 day of November, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PARKER MERCHANDISING CORP.
D/B/A PARKER DISTRIBUTORS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(§) 28 & 29 of the :
Tax Law for the Year(§) or Period(§) :
March 1, 1973 through February 28, 1976.

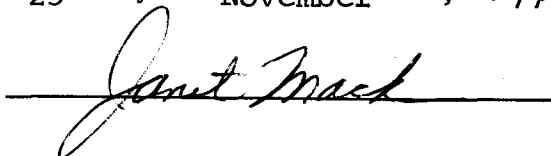
State of New York
County of Albany

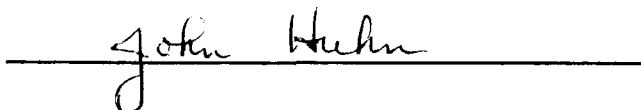
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25 day of November , 1977 , she served the within
Notice of Determination by (~~certified~~) mail upon Peter G.
Pellegrini, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Peter G. Pellegrini, CPA
c/o Pilgrim Business Management, Inc.
1 Overocker Road
Poughkeepsie, NY 12603
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

25 day of November , 1977







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

November 25, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Parker Merchandising Corp.
d/b/a Parker Distributors,
RD 2, Robinson Lane
Wappinger Falls, New York 12590**


Gentlemen:

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) **1130 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Joseph Chynoweth
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

PARKER MERCHANDISING CORP. :

D/B/A PARKER DISTRIBUTORS 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 March 1, 1973
through February 28, 1976. :

Applicant, Parker Merchandising Corp., d/b/a Parker Distributors, RD 2, Robinson Lane, Wappinger Falls, New York 12590, 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 period March 1, 1973 through February 28, 1976 (File No. 16807).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 19, 1977 at 10:00 A.M. Applicant appeared By Peter G. Pellegrini, CPA. The Sales Tax Bureau appeared By Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether the determination of additional taxes due, based upon an audit of applicant's available records for the period March 1, 1973 through February 28, 1976, was correct.

FINDINGS OF FACT

1. On October 20, 1976 and November 15, 1976, the Sales Tax Bureau issued notices of determination and demand for payment of sales and use taxes due against the applicant, Parker Merchandising Corp., for the periods June 1, 1974 through February 28, 1976 and March 1, 1973 through May 31, 1974, respectively. The notice dated November 15, 1976 amended and superseded a notice dated October 1, 1976. Said notices were based on the findings of an audit conducted by the Sales Tax Bureau.

2. Upon examination of applicant's books and records, the Sales Tax Bureau determined that the applicant: (a) failed to collect the proper rate of sales tax on numerous mail-order sales resulting in a 12.54% margin of error and additional sales tax due of \$1,234.88; (b) under-reported taxable sales by \$255,281.00, resulting in additional sales tax due of \$12,086.74; (c) failed to pay sales and/or use tax on the purchase of catalogues distributed within New York State. The additional sales and/or use tax due on catalogue purchases was \$2,463.20.

3. Applicant operated a retail sporting goods and jewelry store located in New Rochelle, New York, until April of 1974, at which time it moved to Hopewell Junction, New York. Applicant was also engaged in a wholesale/retail mail-order business. To enhance its sales, applicant purchased catalogues which it distributed, free of charge, to prospective customers both within and without New York State. The Sales Tax Bureau taxed only those catalogues distributed within New York State.

4. The accounting records maintained by the applicant to record its sales were incomplete in that sales invoices were missing and the sales tax payable account could not be reconciled.

5. The applicant contended that based on an examination of mail-order sales for November and December of 1976, the margin of error should be 5.29% rather than 12.54%.

CONCLUSIONS OF LAW

A. That the applicant maintained fragmentary accounting records and, therefore, failed to comply with section 1135 of the Tax Law.

B. That the audit procedures used by the Sales Tax Bureau to compute the margin of error and to determine taxable sales were proper as authorized in section 1138 of the Tax Law. The resultant findings of additional sales tax due for the period March 1, 1973 through February 28, 1976 were supported by substantial documentary evidence.

C. That the purchase and the subsequent distribution of catalogues to recipients within New York State was subject to the imposition of compensating use tax within the meaning and intent of section 1110 of the Tax Law.


D. That the application of Parker Merchandising Corp., d/b/a Parker Distributors, is denied and the notices of determination and demand for payment of sales and use taxes due issued October 20, 1976 and November 15, 1976 are sustained.

DATED: Albany, New York
November 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER