

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH HARRY NYBERG

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~tax year~~ Period (x) :
December 1, 1974 through February 28, 1975.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September , 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Joseph Harry Nyberg

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Joseph Harry Nyberg
2946 Chester Street
Oceanside, 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 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

29th day of September , 1977.

John Huhn

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH HARRY NYBERG

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period (X) :
December 1, 1974 through February 28, 1975.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September , 1977, ~~he~~ served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Harold Goerlich

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

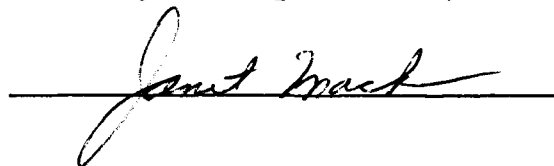
Harold Goerlich, Esq.
380 North Broadway
Jericho, New York 11753

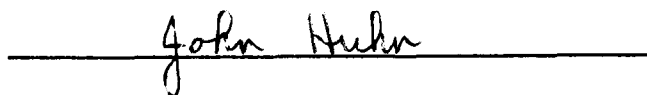
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of September , 1977.







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

September 29, 1977

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

**Mr. Joseph Harry Nyberg
2946 Chester Street
Oceanside, New York**

Dear Mr. Nyberg:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
JOSEPH HARRY NYBERG	:	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 December 1, 1974 through	:	
February 28, 1975.	:	

Applicant, Joseph Harry Nyberg, 2946 Chester Street, Oceanside, New York, 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 period December 1, 1974 through February 28, 1975. (File No. 10472).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977 at 2:45 P.M. Applicant appeared with his representative, Harold Goerlich, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the applicant was a "person required to collect tax" as defined in section 1131(1) of the Tax Law.

FINDINGS OF FACT

1. On October 3, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant for the period December 1, 1974 through February 28, 1975. The notice was issued in accordance with sections 1131(1) and 1138(a) of the Tax Law, holding the applicant liable for sales taxes as an officer of Hydraulic Elevator and Machine Co., Inc.
2. The applicant was an employee, officer, director and 40% shareholder of Hydraulic Elevator and Machine Co., Inc. until July 18, 1974. On this date he sold his entire interest in Hydraulic and resigned as an officer, employee and director of that corporation.
3. The applicant was in no way affiliated with Hydraulic Elevator and Machine Co., Inc. during the period December 1, 1974 through February 28, 1975.

CONCLUSIONS OF LAW

- A. That during the period December 1, 1974 through February 28, 1975 the applicant was not a "person required to collect tax" as defined in section 1131(1) of the Tax Law.
- B. That the application of Joseph Harry Nyberg is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 3, 1975 is cancelled.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER