

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDNA JACOBS AND MARK JACOBS : AFFIDAVIT OF MAILING
D/B/A INDUSTRIAL SALES
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) :
September 1, 1968 through August 31, 1971

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 29th day of September , 1977 , she served the within
Notice of Determination by (~~certified~~) mail upon Edna Jacobs and
Mark Jacobs
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edna Jacobs and Mark Jacobs
d/b/a Industrial Sales
7 Hathaway Lane
White Plains, 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.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDNA JACOBS AND MARK JACOBS
D/B/A INDUSTRIAL SALES

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 Year(s) or Period(s) :
September 1, 1968 through August 31, 1971

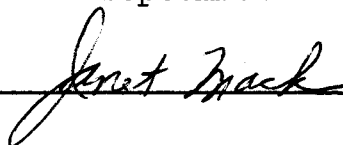
State of New York
County of Albany

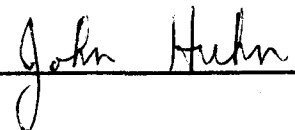
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September , 19 77, she served the within
Notice of Determination by (~~certified~~) mail upon Julius Jacobs
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Julius Jacobs
7 Hathaway Lane
White Plains, 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 , 19 77







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

**Edna Jacobs and Mark Jacobs
d/b/a Industrial Sales
7 Hathaway Lane
White Plains, New York**

Dear Mrs. Jacobs and Mr. Jacobs:

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 Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
EDNA JACOBS and MARK JACOBS : DETERMINATION
D/B/A INDUSTRIAL SALES :
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 September 1, :
1968 through August 31, 1971. :

Applicants, Edna Jacobs and Mark Jacobs d/b/a Industrial Sales, 7 Hathaway Lane, White Plains, New York, 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 September 1, 1968 through August 31, 1971 (File No. 12913).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 13, 1977. Applicants appeared by Julius Jacobs. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the results of the examination of applicant's books and records for the period September 1, 1968 through August 31, 1971 properly reflect applicant's business activities.

FINDINGS OF FACT

1. During the period September 1, 1968 through August 31, 1971, applicants sold major household appliances. The business was conducted from the personal residence of applicant Edna Jacobs.

2. The Sales Tax Bureau conducted an examination of the books and records of Industrial Sales for the period September 1, 1968 through August 31, 1971. As a result of said examination, it issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Edna Jacobs and Mark Jacobs, for tax due in the amount of \$2,567.12, plus penalty and interest.

3. Applicants contended that applicant Mark Jacobs, the son of Edna Jacobs, had no affiliation with Industrial Sales during the period at issue. However, applicants refused to submit an affidavit as confirmation of said contention and did not present documentary evidence in support of their contention.

4. The Sales Tax Bureau attempted to verify reported gross sales. However, adequate books and records were not available. The reconciliation of gross sales per sales tax returns and gross sales per Federal income tax returns could not be conducted since applicants refused to produce copies of Federal income tax returns. Since the reported gross sales could not be substantiated by the applicant, the Sales Tax Bureau increased applicants reported gross sales by fifty percent. In order to determine the extent of nontaxable sales, the Sales Tax Bureau analyzed applicants sales for the quarter ended February 28, 1970. This analysis of sales resulted in the disallowance of reported nontaxable sales to the extent of 39.3%.

5. On the New York State sales and use tax returns filed for the periods September 1, 1968 through August 31, 1971, applicants reported all taxable sales subject to New York State sales tax only. The Sales Tax Bureau estimated that ten percent of applicants sales were subject to both the New York State sales tax and the local sales tax imposed by the City of Yonkers, since said city was within the relative area in which applicants sold their appliances.

6. At the small claims hearing, applicants submitted a sales journal into evidence. However, neither sales invoices nor shipping records were available for examination.

CONCLUSIONS OF LAW

A. That due to the inadequate books and records submitted by applicant, their failure to respond to requests for information and documents and the lack of internal controls within their cash receipts and deposits procedure, the Sales Tax Bureau properly determined the additional tax due in accordance with the meaning and intent of section 1138 of the Tax Law.

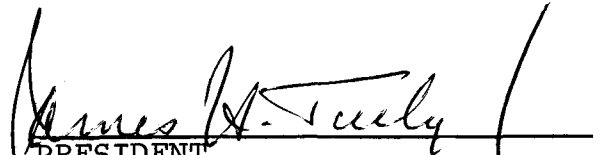
B. That there is no evidence to justify the cancellation of the assessment against applicant Mark Jacobs.

C. That the application of Edna Jacobs and Mark Jacobs d/b/a Industrial Sales is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on May 18, 1972 is sustained.

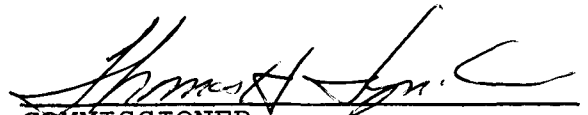
DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER