

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL BROCK, d/b/a PAUL NOVELTY CO.

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)~~ :
December 1, 1967 through August 31, 1971.

State of New York
County of Albany

Bruce Batchelor, 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 8th day of April, 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Paul Brock, d/b/a Paul
Novelty Co. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Paul Brock
d/b/a Paul Novelty Company
Whitehall, New York 12887

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)~~
~~XXXX~~ 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

8th day of April, 1977.

Bruce Batchelor

Janet M. [Signature]



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

April 8, 1977

TELEPHONE: (518) **457-1723**

Paul Brock
d/b/a Paul Novelty Company
Whitehall, New York 12887

Dear Mr. Brock:

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

Please take further notice that pursuant to
Section(s) **1139 and 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

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Application :
of :
PAUL BROCK, d/b/a PAUL NOVELTY CO. :
for Revision of a Determination or for : DETERMINATION
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Period December 1, 1967 through :
August 31, 1971. :

Applicant, Paul Brock, d/b/a Paul Novelty Company, Whitehall, New York 12887, 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, 1967 through August 31, 1971. (Identification No. 14-1288352).

A small claims hearing was held November 8, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, before Harry Huebsch, Hearing Officer. The applicant, Paul Brock, appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Harris Sitrin, Esq., of counsel).

Whether or not a refund can be granted for sales and use taxes concededly overpaid where the claim for credit or refund was not timely filed?

FINDINGS OF FACT

1. Applicant, Paul Brock, d/b/a Paul Novelty Company, was engaged in the sale of cigarettes to the public through vending machines. For the period in question, December 1, 1967 through August 31, 1971, taxable sales were overstated on Forms ST-100 and the sales tax due was thereby also overstated.

2. On December 14, 1974, applicant, Paul Brock, d/b/a Paul Novelty Company, filed an application for credit or refund for the period December 1, 1967, through August 31, 1971, requesting a refund of sales taxes overpaid in the amount of \$4,942.83.

3. The Sales Tax Bureau issued a denial of refund dated January 29, 1975 because the application for credit or refund was filed beyond the three year-requirement period in accordance with section 1139(a) of the Tax Law.

4. Applicant, Paul Brock, d/b/a Paul Novelty Company, contended that taxable sales and sales tax due were overstated due to the negligence of the Sales Tax Bureau in failing to properly instruct him as to the proper computations involved and therefore the three-year statute of limitations should be mitigated.

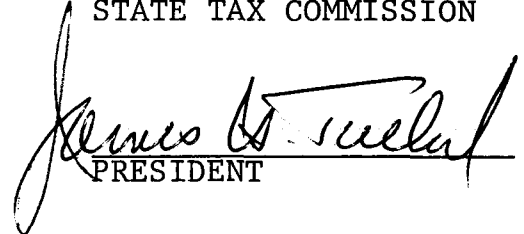
CONCLUSIONS OF LAW

A. That section 1139(a) of the Tax Law does not permit the authorization of a refund of the sales taxes here in dispute.

B. That the application of Paul Brock, d/b/a Paul Novelty Company, is denied and the refund denial dated January 29, 1975 is sustained.

DATED: Albany, New York
April 8, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER