

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BMG GARAGE CORP.

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)
August 1, 1965 through August 31, 1969

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 13th day of December, 1977, he served the within

Notice of Determination by ~~registered~~ mail upon BMG Garage Corp.


~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: BMG Garage Corp.
1114 First Avenue
New York, New York

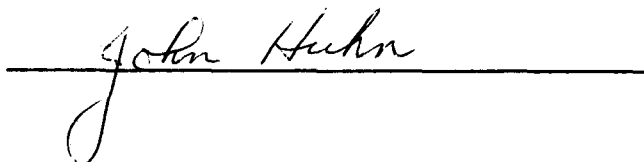
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~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

13th day of December, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BMG GARAGE CORP.

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 ~~XXXXXX~~ Period ~~(s)~~ :
August 1, 1965 through August 31, 1969

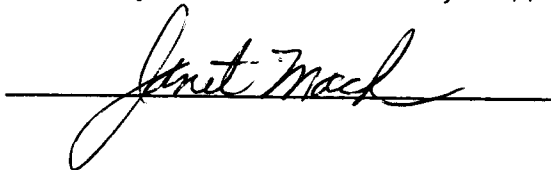
State of New York
County of Albany

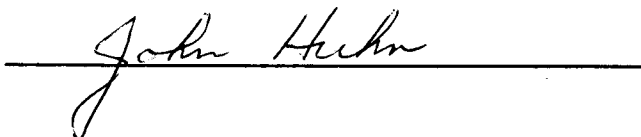
John Huhn, being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December, 1977, ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Julian Zarny
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Julian Zarny
Alexander's Inc.
500 Seventh Avenue
New York, New York 10018
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.

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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

13th day of December, 1977.







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

December 13, 1977

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

**2002 Garage Corp.
1114 First Avenue
New York, New York**

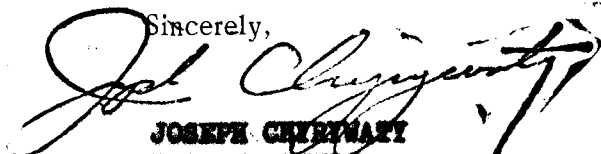
Gentlemen:

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 CHIRBA
HEARING OFFICER**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

BMG GARAGE CORP. :

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 August 1, :
1965 through August 31, 1969. :

Applicant, BMG Garage Corp., 1114 First Avenue, New York, 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 August 1, 1965 through August 31, 1969 (File No. 00317).

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 November 17, 1976. Applicant appeared by Julian Zarny. The Sales Tax Bureau appeared by Peter Crotty, Esq. (James Scott, Esq., of counsel).

ISSUES

I. Whether applicant over-collected sales tax on the sale of gasoline during the period August 1, 1965 through August 31, 1969.

II. Whether the Sales Tax Bureau accepted a properly signed Consent Extending Period of Limitation for Assessment of Sales and Use Taxes.

FINDINGS OF FACT

1. During the period August 1, 1965 through August 31, 1969, applicant operated a gasoline sales and automotive service station.

2. The Sales Tax Bureau conducted an examination of applicant's books and records for the period August 1, 1965 through August 31, 1969. As a result of the examination, it issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant on March 9, 1970 in the amount of \$6,580.19, plus penalty and interest.

3. In conjunction with the aforesaid examination of applicant's books and records, the Sales Tax Bureau submitted a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes to the applicant, with the instruction that the Consent required the signature of a corporate officer. The Consent stipulated that the amount of sales and use taxes due for the periods August 1, 1965 through August 31, 1969 could be determined at any time on or before December 19, 1970.

4. The Consent Extending Period of Limitation for Assessment of Sales and Use Taxes was returned to the Sales Tax Bureau signed by Maurice Hefferman. Mr. Hefferman is applicant's controller.

5. The additional tax found to be due as a result of the examination of applicant's books and records, consisted primarily of sales tax which the Sales Tax Bureau had deemed to be over-collected and not remitted. During the period August 1, 1965 through August 31, 1969, applicant displayed placards above the gasoline pumps which listed the breakdown of the price per gallon of gasoline. The Sales Tax Bureau's auditor discovered that the aforesaid placards listed the sales tax per gallon of gasoline at approximately one cent in excess of the proper amount to be collected. This discovery resulted in the determination that applicant was over-collecting sales tax at the rate of approximately one cent per gallon.

6. The Sales Tax Bureau's examination also revealed that when preparing the quarterly sales tax returns, applicant computed the sales tax due by multiplying the total gallons of gasoline sold by the proper amount of sales tax to be collected per gallon. Therefore, the Sales Tax Bureau concluded that applicant had not remitted the sales tax it had over-collected.

7. Applicant contended that the posting of the sales tax due per gallon of gasoline, in excess of the actual amount due thereon, was merely an error and should not be considered an over-collection of sales tax.

8. Applicant also contended that Maurice Hefferman was not a corporate officer and, therefore, the Consent Extending the Period of Limitation for Assessment of Sales and Use Taxes which he had signed, was not binding on it and, accordingly, the period of limitation had expired.

9. Applicant did not present evidence to discredit or dispute the Sales Tax Bureau's reliance on Maurice Hefferman as a corporate officer.

CONCLUSIONS OF LAW

A. That, in the absence of invoices or other evidence that indicates otherwise, the posted price per gallon of gasoline and the breakdown thereof must be relied upon as the price per gallon of gasoline and the sales tax collected thereon. Therefore, applicant had over-collected sales tax on the gasoline it sold during the period August 1, 1965 through August 31, 1969.

B. That in accordance with the meaning and intent of section 1137 of the Tax Law, applicant must pay to the Tax Commission all monies collected purportedly as tax and in excess of rates prescribed.

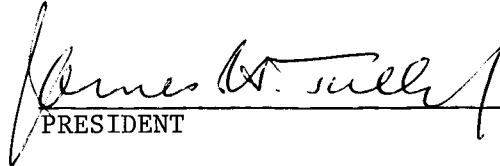
C. That there is no evidence which indicates that Maurice Hefferman was not a corporate officer or that the Sales Tax Bureau improperly relied upon his signature as a corporate officer.

D. That the application of BMG Garage Corp. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on March 9, 1970 is sustained.

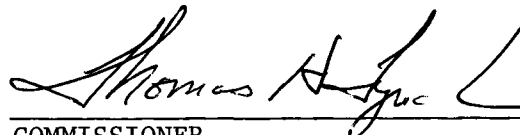
DATED: Albany, New York

STATE TAX COMMISSION

December 13, 1977


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE

TAX APPEALS BUREAU

to . Secretary . to . the . State . Tax . Commission

Please attach to Determination

12/21/77

M-75 (5/76)

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

BMG Garage Corp.
114 First Avenue
New York, New York

—
Bmg. Garage Corp.
c/o Alexander's Inc.
ATTN: MR. ZARNY, TAX MANAGER
500 7th Avenue
New York, N.Y. 10018

STATE OF NEW YORK
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State of New York
County of Albany

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c/o Alexander's Inc.
Att. Mr. Zarny, Tax Manager
500 7th Avenue
New York, New York 10018
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the United States Postal Service within the State of New York.

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~~XXXXXX~~) petitioner herein and that the address set forth on said wrapper is the
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Sworn to before me this

21 day of December , 1977.

