

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALDENS, INC.

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 November 30, 1969

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within Notice of Determination by ~~(certified)~~ mail upon Aldens, Inc. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Aldens, Inc.
500 Roosevelt Road
Chicago, Illinois
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

16th day of August, 1977

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of August, 1977, she served the within
Notice of Determination by (~~certified~~) mail upon Joseph H. Murphy, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph H. Murphy, Esq.
Hancock, Ryan, Shove & Hust
One Mony Plaza
Syracuse, NY 13202
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.

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Janet Mack



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

August 16, 1977

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

Aldene Inc.
500 Roosevelt Road
Chicago, Illinois

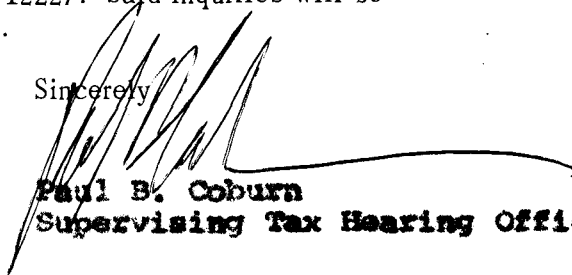
Gentlemen:

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,


Paul B. Coburn
Supervising Tax Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALDENS, INC.	:	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 Periods August 1, 1965 through	:	
November 30, 1969.	:	

The petitioner, Aldens, Inc., 500 Roosevelt Road, Chicago, Illinois, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods August 1, 1965 through November 30, 1969. (File No. 01860).

The petitioner and the Sales Tax Bureau entered into a Stipulation of Facts on September 23, 1976, and agreed to waive a formal hearing in this matter.

After due consideration, the State Tax Commission makes the following determination.

ISSUE

Whether the petitioner was required to collect and pay over the local sales and/or use taxes imposed by all jurisdictions in New York State, or to collect the local tax only where it maintained its offices in New York State.

FINDINGS OF FACT

1. The petitioner, Aldens, Inc., filed sales and use tax returns for the periods August 1, 1965 through November 30, 1969.

2. The petitioner executed a consent extending the time within which to issue an assessment of sales and use taxes for the periods in issue to June 20, 1970.

3. On March 5, 1970, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the petitioner for the periods August 1, 1965 through November 30, 1969 in the amount of \$77,933.44, plus penalty and interest of \$15,968.62, for a total of \$93,902.06. The petitioner timely filed an application to review the aforementioned determination.

4. Aldens, Inc., is a corporation organized and existing under, and by virtue of the laws of the State of Illinois. During the tax periods in issue, the petitioner conducted a mail-order business in all fifty states of the United States, as well as in foreign countries and territories. It has its main office and several warehouses in the State of Illinois.

5. Aldens Catalog Offices, Inc., is a wholly-owned subsidiary of Aldens, Inc., and was organized and operated under the laws of the State of Indiana as a sales agent for Aldens, Inc. It has a principal office for the transaction of its business in Chicago,

Illinois. It maintained and operated four offices in the State of New York, viz:

- a. 403 Main St., Buffalo, N.Y. (Erie County) - 6 employees;
- b. 130 Main St., Rochester, N.Y. (Monroe County) - 7 employees;
- c. 109 South Warren St., Syracuse, N.Y. (Onondaga County) - 6 employees;
- d. 450 West 33rd St., New York, N.Y., (New York City) - 10 employees.

The telephone numbers and locations of each of the offices were listed in the telephone directory serving the area in which each of these offices was located.

6. Employees in the offices located within the State of New York, among other functions, took orders by telephone and solicited orders by telephone. The petitioner solicited business mainly by catalogs sent through the mails. Merchandise was delivered to customers located in New York State by mail or common carrier.

7. During the taxable periods involved, the petitioner was a vendor registered under Section 1134 of the Tax Law. The petitioner collected a state sales and use tax on its sales to customers in the State of New York. In addition, it collected local sales and use taxes for the four localities in which Aldens Catalog Offices, Inc. then maintained offices, namely, Erie County, Monroe County,

Onondaga County and New York City. The petitioner collected no local sales or use taxes for shipments to any other localities in the state.

8. The Notice of Determination referred to in Finding of Fact "3", supra, is based on the failure of the petitioner to collect and pay over the local sales tax on shipments made outside those localities within the State of New York where the petitioner maintained no offices.

CONCLUSIONS OF LAW

A. That Article IX, section 2(c)(8) grants the power to local government with respect to "the levy, collection and administration of local taxes authorized by the Legislature, consistent with laws enacted by the Legislature."

B. That the petitioner was a person required to collect the tax, as defined in section 1131(1) of the Tax Law to include "every vendor of tangible personal property or services."

C. That the reliance by the petitioner on the case of National Bellas Hess Inc. v. Department of Revenue of the State of Illinois, 386 U.S. 753, 87 Sup. Ct. 1389, is misplaced since in that case the taxpayer had no office, solicitors, telephone numbers, etc. in the State, and the State had no local use tax similar to that of the State of New York.

D. That the obligation to collect the local sales and use taxes imposed by all jurisdictions in the State does not impose any undue burden on interstate commerce (Nelson v. Sears, Roebuck & Co. 312 U. S. 359, 85L ed 888; Nelson v. Montgomery Ward & Company, Inc. 312 U. S. 373, 85L ed 897); nor does it violate the due process clause of the Fourteenth Amendment (National Geographic Society v. California Board of Equalization, - U. S. Supreme Court decided April 4, 1977).

E. That the petitioner was expressly required to collect and pay over the local sales and use taxes imposed by all jurisdictions in the State in accordance with the provisions of section 1137(a) (b) and (c) and 1254(a) of the Tax Law.

F. That the determination of the Sales Tax Bureau is correct and the petition of Aldens, Inc. be and the same is hereby denied.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER