

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ADVANCED COLLISION TYSON COLLISION,  
INC.

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(s)  
June 1, 1972 through May 31, 1975

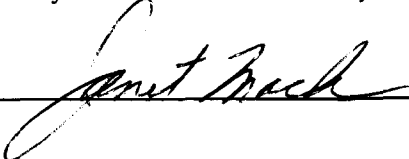
State of New York  
County of Albany

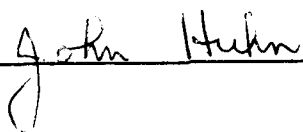
John Huhn, being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 11 day of October, 1977, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Advanced Collision  
Tyson Collision, Inc.  
~~(representative of the)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Advanced Collision Tyson Collision, Inc.  
123 Jericho Turnpike,  
Floral Park, New York 11001  
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)~~  
~~XXXXXX~~ 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

11 day of October, 1977

  
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\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ADVANCED COLLISION TYSON COLLISION, INC.

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(s)

June 1, 1972 through May 31, 1975

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 11 day of October, 1977, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Melvin Lesser, P.A.

(representative of) the petitioner in the within proceeding,

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

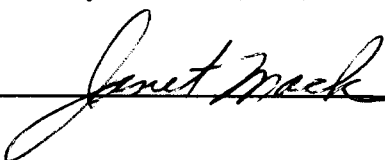
as follows: Melvin Lesser, P.A.  
Lesser & Harris  
400 Jericho Turnpike  
Jericho, NY 11753

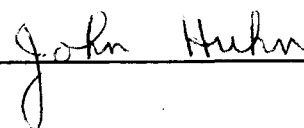
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That deponent further says that the said addressee is the (representative  
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last known address of the (representative of the) petitioner.

Sworn to before me this

11 day of October, 1977

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

October 11, 1977

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

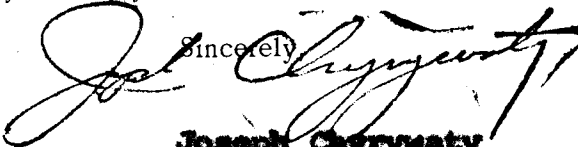
**Advanced Collision Tyson Collision, Inc.**  
**123 Jericho Turnpike**  
**Floral Park, New York 11001**

**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 Chrywaty**  
**Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
ADVANCED COLLISION TYSON COLLISION, 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 Period June 1, 1972 through May 31,	:	
1975.	:	

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Applicant, Advanced Collision Tyson Collision, Inc., 123 Jericho Turnpike, Floral Park, New York 11001, 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 June 1, 1972 through May 31, 1975 (File No. 15943).

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 23, 1977. Applicant appeared by Melvin Lesser, P.A. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the results of the audit of applicant's books and records for the period June 1, 1972 through May 31, 1975 properly reflected the applicant's business activities.

FINDINGS OF FACT

1. Applicant operates an auto body repair shop in Floral Park, New York.

2. Applicant filed New York State sales and use tax returns for the period June 1, 1972 through May 31, 1975.

3. The Sales Tax Bureau performed an examination of applicant's books and records for the period June 1, 1972 through May 31, 1975 and, as a result of said audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant in the amount of \$9,846.74, plus penalty and interest.

4. The Sales Tax Bureau also issued notices of determination and demand for payment of sales and use taxes due against applicant's corporate officers. The personal liability of the corporate office, however, is not at issue.

5. The aforesaid examination of applicant's books and records was prompted by several complaints submitted to the Nassau County Department of Consumer Affairs, which claimed that applicant was making cash sales without charging sales tax or rendering sales invoices.

6. For purposes of filing quarterly sales and use tax returns, applicant reported total bank deposits, less estimated nontaxable sales, at the rate of 40 to 50 percent per quarter.

7. Although applicant issued sales invoices to many of its customers, such invoices or copies thereof were not presented at the hearing.

8. Applicant also presented no schedules or records which would have revealed the amounts of individual sales or the names of its customers.

9. Applicant used some cash receipts without such receipts ever having been deposited, although applicant contended that it did so on a minimal basis.

10. Although applicant presented various exemption certificates and statements in an attempt to support nontaxable sales, such sales and the amounts thereof can not be reconciled with applicant's books and records.

11. The Sales Tax Bureau computed the additional tax due by increasing applicant's bank deposits by 10 percent to account for cash receipts never deposited, disallowing nontaxable sales and assessing tax on unsubstantiated purchases.

12. Applicant contended that the Sales Tax Bureau's determination was unfounded and included the assessing of sales tax on sales tax collected, since total bank deposits were not broken down as to price and sales tax by the Sales Tax Bureau's auditor.

CONCLUSIONS OF LAW

A. That the facts clearly indicate that applicant's books and records do not provide sufficient means to verify gross sales. In addition, not all cash receipts were deposited and applicant can not prove that sales tax was in fact collected from its customers.

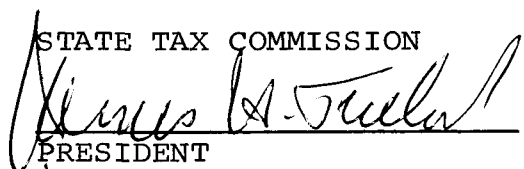
B. That, although applicant presented certificates and other statements in an attempt to substantiate nontaxable sales, there is no evidence to indicate the amount of such sales or that such sales were included in gross sales.

C. That the Sales Tax Bureau's determination of additional tax due was properly arrived at in accordance with the meaning and intent of section 1138(a) of the Tax Law.

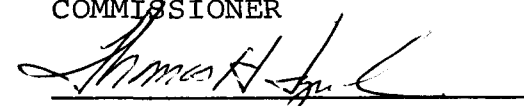
D. That the application of Advanced Collision Tyson Collision, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on December 9, 1975 is sustained.

DATED: Albany, New York  
October 11, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER