

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARNABY MEN'S SHOP, 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) 1971~~ Period(s) :
9/1/69 - 8/31/72

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 ~~(certified)~~ mail upon Carnaby Men's Shop, Inc.

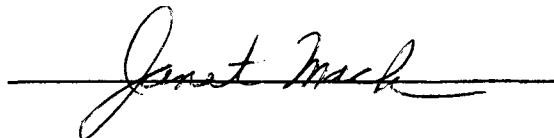
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Carnaby's Mens Shop Inc.
247 West 42nd Street
New York, New York 10036

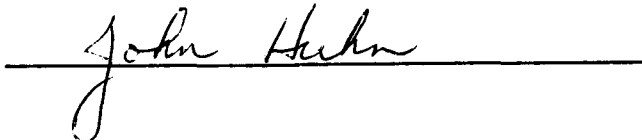
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

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of

CARNABY MEN's SHOP, INC.

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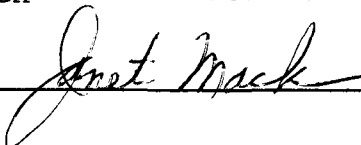
State of New York
County of Albany

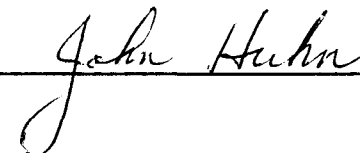
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December , 1977 , ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Bernard W. Zeligson
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bernard W. Zeligson, CPA
381 Sunrise Highway
Lynbrook, New York 11563
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

13th day of December , 19 77







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

Carnaby Men's Shop, Inc.
247 West 42nd Street
New York, New York 10036

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) ~~1132~~ **& 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

In the Matter of the Application	:	
of	:	
CARNABY MEN'S SHOP, 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 September 1, 1969 through	:	
August 31, 1972.	:	

Applicant, Carnaby Men's Shop, Inc., 247 West 42nd Street, New York, New York 10036, 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, 1969 through August 31, 1972 (File No. 10066).

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 April 1, 1977. Applicant appeared by Bernard W. Zeligson, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the results of the examination of applicant's books and records for the period September 1, 1969 through August 31, 1972 properly reflected applicant's additional sales and use tax liability.

FINDINGS OF FACT

1. During the period September 1, 1969 through August 31, 1972, applicant operated a retail men's wear shop and a tailor shop in New York City. In addition, it operated a third shop in New York City which commenced and terminated operations during the period in issue.
2. The Sales Tax Bureau conducted an examination of applicant's books and records for the period September 1, 1969 through August 31, 1972 and, as a result of the examination, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due on April 15, 1974 against applicant in the sum of \$20,411.13, plus penalty and interest.
3. During the period September 1, 1969 through August 31, 1972, the books and records maintained by the applicant were deficient and in some cases inconsistent.
4. The Sales Tax Bureau analyzed applicant's gross sales per Federal income tax returns, the general ledger sales account, the total cash deposits and the cash expenditures, and determined that the applicant had understated gross sales reported on its sales and use tax returns by \$84,407.00.
5. The Sales Tax Bureau also determined that sales in the amount of \$100.00 per week or \$15,600.00 for the audit period were nontaxable, in contrast to \$239,125.00 reported by applicant as nontaxable for the audit period. This reduction in nontaxable sales

was made on the grounds that applicant's books and records did not reflect the nature of nontaxable sales, and it appeared that applicant had arbitrarily reported nontaxable sales on its quarterly sales and use tax returns.

6. The Sales Tax Bureau's determination that \$100.00 per week of sales were nontaxable was formulated on the basis of the auditor's personal observations of applicant's tailor shop and consideration of the shop's location. These nontaxable sales were considered receipts from the tailoring of used garments. No allowance was made to reflect sales for resale.

7. Applicant submitted statements from three vendors to establish the extent of its sales for resale. Two of these statements did not contain sufficient information to conclusively indicate that the sales mentioned therein were sales for resale, nor were invoices available to support the amounts claimed. The third statement indicated that applicant made sales for resale in the amount of \$10,618.20.

8. During the period in issue, applicant derived \$150.00 per week from the tailoring of used garments.

CONCLUSIONS OF LAW

A. That the applicant, Carnaby Men's Shop, Inc., had receipts from the service of tailoring used garments in the sum of \$150.00 per week during the period September 1, 1969 through August 31, 1972, and that the receipts from these tailoring services were not taxable within the meaning of section 1105(c)(3) of the Tax Law.


B. That the applicant, Carnaby Men's Shop, Inc., made sales for resale in the sum of \$10,618.20 during the period September 1, 1969 through August 31, 1972.

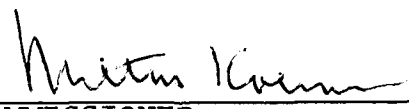
C. That the application of Carnaby Men's Shop, Inc. is granted to the extent set forth in Conclusion of Law "A" and "B" above. The Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 15, 1974, and that, except as so granted, the application is in all other respects denied.

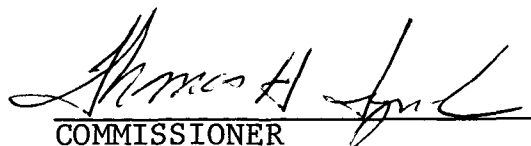
DATED: Albany, New York
December 13, 1977

NEW

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER