

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EMPIRE STATE SILK SCREENING 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)~~ Period(s) :
September 1, 1970 through August 31, 1973

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 29th day of July, 1977, she served the within

Notice of Determination by ~~(certified)~~ mail upon Empire State Silk Screening

Corp. ~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Empire State Silk Screening Corp.
55 West 17th Street
New York, New York 10011

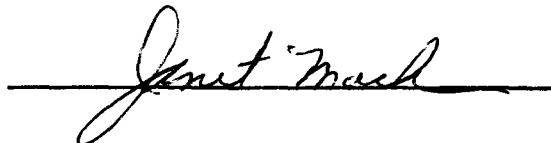
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of July, 1977





STATE OF NEW YORK
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September 1, 1970 through August 31, 1973

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 29th day of July, 1977, she served the within

Notice of Determination by ~~certified~~ mail upon Norman S. Margolies &
Jerome Margolies, CPAS (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Norman S. Margolies & Jerome Margolies, CPAS
83 Wilmont Circle
Scarsdale, New York 10583
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

29th day of July, 1977.

Marsina Donnini

Janet Mack



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

July 29, 1977

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

Empire State Silk Screening Corp.
55 West 17th Street
New York, New York 10011

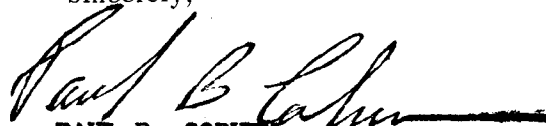
Gentlemen:

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 Application :
of :
EMPIRE STATE SILK SCREENING 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 September 1, 1970 through :
August 31, 1973. :

Applicant, Empire State Silk Screening Corp. (hereinafter "Empire"), 55 West 17th Street, New York, New York 10011, 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, 1970 through August 31, 1973. (File No. 10095)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 8, 1976, at 1:15 p.m. The petitioner appeared by Jerome Margolies, C.P.A. and Norman Margolies, C.P.A. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the sales tax deficiency assessed against Empire State Silk Screening Corp. for the period September 1, 1970 through August 31, 1973 was arrived at correctly.

FINDINGS OF FACT

1. The applicant, Empire, timely filed New York State sales and use tax returns for the period September 1, 1970 through August 31, 1973.

2. On March 15, 1974, as the result of an audit, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued against applicant, Empire, showing taxes due for the period September 1, 1970 through August 31, 1973 of \$4,114.40, plus penalties and interest of \$1,080.32, for a total allegedly due of \$5,194.72.

3. A consent extending the period of limitation to March 20, 1974 had been executed by petitioner, Empire, on November 13, 1973.

4. On March 29, 1974, the applicant, Empire, applied for a revision of the determination of the deficiencies in sales tax.

5. Applicant, Empire, was primarily a screener of posters and display items for advertising agencies, who would then resell the items to their clients. Some bills were sent by request directly to the clients by applicant, Empire. On such bills, retail sales taxes were itemized and shown on invoices and the books. On bills to advertising agencies, printers and binders, the applicant did not charge sales taxes, and usually recorded the number of the blanket resale certificate shown by the purchaser.

6. Applicant, Empire, kept its books on a cash basis, but based its sales tax returns on an accrual basis. Gross sales per books were found on audit to be greater than gross sales reported on the sales tax returns.

7. Taxable sales according to applicant's records were deducted from gross sales per books to calculate nontaxable sales.

8. A test period of three months was selected, comprised of September, October and November of 1972. Every invoice for those months was scrutinized by the auditor from the Sales Tax Bureau. Some invoices listed screens or proofs as separate items billed to vendees. The sales tax examiner disallowed these amounts. A percent of error was computed of the sales for the test quarter, and the taxable sales increased by that percent. The positives, screens and negatives involved were sold by petitioner, Empire, for resale by its customers. Resale certificates, which were not available at the time of the Sales Tax Bureau audit, were presented at the formal hearing. The disallowance upon the audit has been adjusted. The percent of error has been reduced from 4.56% to .895%, for an increase of taxable sales of \$5,732.84, rather than \$29,081.29.

9. The detailed test-period audit of sales taxes collected and sales taxes paid, according to sales tax returns filed, revealed an error of \$31.50 for the quarter. This amounted to an underpayment of 4.81% of the sales tax paid. This

percent of error was applied to taxable sales for the period under review, so as to compute unpaid sales taxes due of \$460.11.

10. Applicant, Empire, had not paid sales taxes on an air conditioning installation. It claimed that the air conditioning installation was exempt from sales tax as a capital improvement. The installation had not become an integral component part of the building so as to be exempt from sales tax as a capital improvement, within the meaning and intent of section 1115(a)(17) of the Tax Law.

11. Applicant, Empire, failed to present proof that sales and use taxes had been paid upon machinery and equipment purchased during the period September 1, 1970 through August 31, 1973.

12. Applicant, Empire, relied upon the advice of its certified public accountant in the delay in payment of the sales tax deficiency assessed in the Notice of Determination.

CONCLUSIONS OF LAW

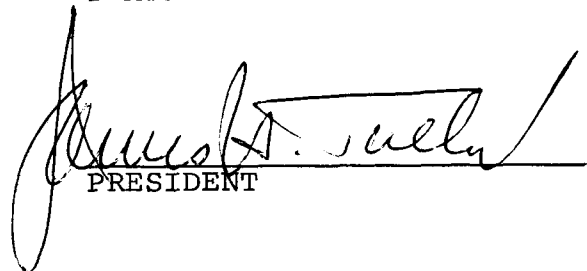
A. That the sales tax returns as filed for the period September 1, 1970 through August 31, 1972 were incorrect; that the Sales Tax Bureau properly determined the amount of tax due from such information as was available within the meaning and intent of section 1138(a) of the Tax Law, with the exception that the percent of error in nontaxable sales reported was .895% and not 4.56%.

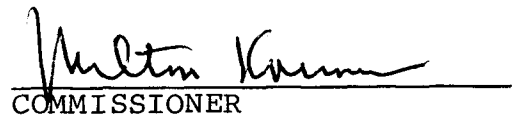
B. That the petition of Empire State Silk Screening Corp. is granted to the extent that the interest, in excess of the minimum interest, and the penalty, pursuant to section 1145(a) of the Tax Law are waived, and that the percent of error in nontaxable sales reported is reduced from 4.56% to .895%, reducing nontaxable sales disallowed from \$29,081.29 to \$5,732.84.


C. That the Sales Tax Bureau is directed to recompute the sales tax deficiency of Empire State Silk Screening Corp. in accordance with this decision, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
July 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER