

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SWEZEY & NEWINS, 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)~~ :
September 1, 1970 through August 31, 1973.

State of New York
County of Albany

Catherine Steele, 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 30th day of November, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Swezey & Newins, Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Swezey & Newins, Inc.
1 West Main Street
Patchogue, New York 11772

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

30th day of November, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SWEZEY & NEWINS, 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)~~ Period(s) :
September 1, 1970 through August 31, 1973.

State of New York
County of Albany

Catherine Steele, 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 30th day of November, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Louis L. Theiss

(representative of) the petitioner in the within proceeding,

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

Louis L. Theiss, CPA
41-02 Bell Boulevard
Bayside, New York 11361

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

30th day of November, 1976.

Catherine Steele

Janet Mark



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 30, 1976

TELEPHONE: (518) **457-3850**

Swezey & Newins, Inc.
1 West Main Street
Patchogue, New York 11772

Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

SWEZEY & NEWINS, INC. :

DETERMINATION

for a Revision of a Determination or for a :
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, Swezey and Newins, Inc., 1 West Main Street, Patchogue, New York, 11772, has applied for a 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.

A small claims hearing was held before Joseph Marcus, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, Room 65-31, New York, New York, July 15, 1976, at 9:15 A.M. Applicant was represented by Louis Theiss, C.P.A. The Sales Tax Bureau was represented by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Whether applicant can deduct sales tax on a bad debt where sufficient payment was received to equal tax due on the original sale.

FINDINGS OF FACT

1. Applicant, Swezey and Newins, Inc., operates a department store in Patchogue, New York. On November 29, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use

taxes due, Notice No. 90753580, in the amount of \$2,603.00 plus penalty and interest of \$923.85 totalling \$3,526.85. Applicant filed an application for a hearing on February 2, 1975.

2. The assessment contained four elements: tax on expense purchases subject to credit; material purchases subject to use tax; disallowance of tax credit taken on bad debts; and tax due on a miscellaneous sale. By stipulation, the only issue in dispute is the disallowance of tax credit taken on bad debts.

3. During the period in question, applicant made retail cash and credit sales. The sales tax return for the period ending February 29, 1972, revealed a large amount of non-taxable sales. The Sales Tax Bureau ascertained that of the \$52,688.00 claimed as non-taxable sales \$46,362.00 represented an accumulation of accounts deemed to be worthless. The Sales Tax Bureau tested a representative segment of accounts deemed worthless and determined that 26.22 percent of the worthless accounts met the criteria established by the Sales Tax Bureau for refund of sales tax, and made allowance in accordance with his findings. Applicant objected to the Sales Tax Bureau's findings on the ground that all bad debts should qualify for tax credit. Applicant does not dispute the computation nor the other elements of the assessment.

CONCLUSIONS OF LAW

A. That section 1105 of Article 28 imposes a tax on receipts from sales.

B. That section 1101(b)(3) defines receipts as "the amount of the sale price of any property..."

C. That since the tax is imposed and payable on the amount of the sale, it is held that the first payments on each sale are to be applied to the tax. If the sum of the payments does not equal the tax, a vendor may claim credit for the difference between the tax remitted by him to New York State and the tax collected from his customer.

D. That the test performed by the examiner was proper and conformed with the statutory requirements of the audit.

E. That the determination under review is sustained, and that applicant's application is denied.

DATED: Albany, New York
November 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER