

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BROWNSTONE SCHOOL

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 ~~(X)~~
January 1, 1973 through November 30, 1975.

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 25th day of August, 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon Brownstone School

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

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

as follows: Brownstone School
128 West 80th Street
New York, New York 10024

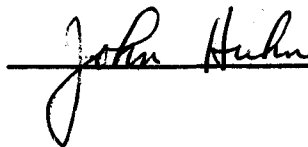
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BROWNSTONE SCHOOL

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 ~~Year(s)~~ Period ~~(s)~~ :
January 1, 1973 through November 30, 1975.

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 25th day of August , 1978, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon James F. Gleason, Jr.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: James F. Gleason, Jr., Esq.
One Chase Manhattan Plaza
New York, New York 10005

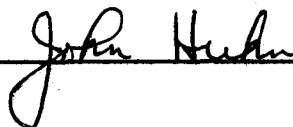
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 1978.







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

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

August 23, 1978

**Brownstone School
128 West 80th Street
New York, New York 10024**

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) **1139 & 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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
BROWNSTONE SCHOOL	:	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 January 1, 1973 through	:	
November 30, 1975.	:	

Applicant, Brownstone School, 128 West 80th Street,
New York, New York 10024, 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
January 1, 1973 through November 30, 1975 (File No. 14540).

A small claims hearing was held before Joseph Milack,
Hearing Officer, at the offices of the State Tax Commission,
Two World Trade Center, New York, New York, on October 20,
1976. Applicant appeared by James F. Gleason, Jr., Esq. The
Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox,
Esq., of counsel).

ISSUE

Whether applicant, an exempt organization, is entitled to a
refund of sales tax paid prior to its adoption of formal articles
of association.

FINDINGS OF FACT

1. Applicant has operated a non-profit school and day care center in New York, New York, since early in 1973. However, formal articles of association were not adopted until February of 1975.

2. The adoption of formal articles of association did not change applicant's operations or organizational structure. At all times since its inception in 1973, applicant has had a board of directors and has employed officers.

3. Applicant has been operating under a contract with the New York City Agency of Child Development since September of 1973.

4. A certified public accountant retained by the New York City Agency of Child Development has certified that audits of applicant's books and records had indicated that applicant has been operating on a not-for-profit basis since the initial audit in September of 1973.

5. On October 27, 1975, applicant filed an application for refund of sales tax in the amount of \$879.66. This was done upon the grounds that it was an exempt organization and had erroneously paid sales tax on the purchases it had made from its inception in early 1973 through the date of said application.

6. In conjunction with the application for refund, applicant filed an application for an exempt organization certificated, which was approved by the Sales Tax Bureau on December 16, 1975.

7. On March 5, 1976, the Sales Tax Bureau approved applicant's claim for refund to the extent of \$229.25, applicable to sales tax paid after applicant's formal adoption of articles of association in February of 1975, and denied that portion of said claim applicable to sales tax paid prior to the adoption of formal articles of association.

8. Applicant contended that regardless of the fact that it did not adopt formal articles of association until February of 1975, it was organized and operated as an exempt organization within the meaning and intent of section 1116(a)(4) of the Tax Law, and, therefore, its application for refund of sales tax should have been approved in total.

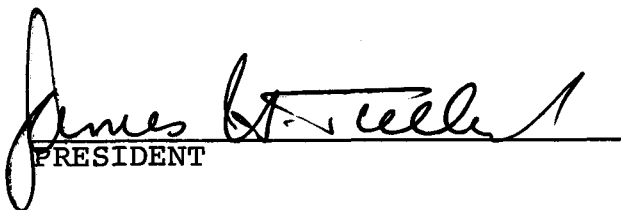
CONCLUSIONS OF LAW

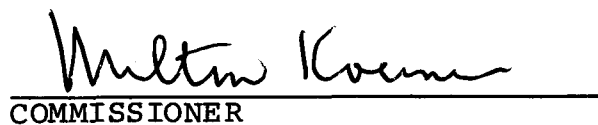
A. That, although applicant operated a school and a day care center on a non-profit basis since early 1973, and had been recognized as a non-profit entity by a certified public accounting firm retained by the New York City Agency of Child Development since September of 1973, applicant did not formally adopt articles of association until February of 1975 and, therefore, was not "organized and operated" exclusively for an exempt purpose within the meaning and intent of section 1116(a)(4) of the Tax Law, until said date.

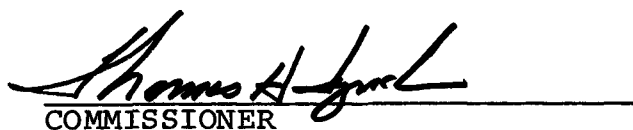
B. That the application of the Brownstone School is denied.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER