

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
S & K WINE & LIQUOR 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 ~~XXXXXX~~ Period(s) :
March 1, 1973 through February 29, 1976

State of New York
County of Albany

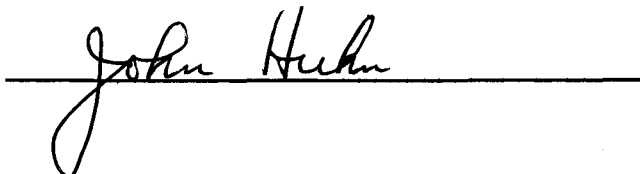
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of October , 19 78, she served the within
Notice of Determination by ~~(certified)~~ mail upon S & K Wine
& Liquor Corp. ~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: S & K Wine & Liquor Corp.
320 Peat Street
Syracuse, NY 13210
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

13 day of October , 19 78







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

October 13, 1978

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

S & K Wine & Liquor Corp.
320 Peat Street
Syracuse, NY 13210

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 Chyrywaty
Joseph Chyrywaty
Hearing Examiner

cc: ~~Petitioner's Representative~~
~~John J. Koerner~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
S & K WINE & LIQUOR 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 March 1, 1973 through :
February 29, 1976. :

Applicant, S & K Wine & Liquor Corp., 320 Peat Street,
Syracuse, New York 13210, 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 March 1, 1973 through
February 29, 1976 (File No. 15982).

A small claims hearing was held before Joseph Chyrywaty,
Hearing Officer, at the offices of the State Tax Commission,
State Office Building, Syracuse, New York, on July 26, 1977 at
2:45 P.M. Applicant appeared by its secretary, Frederick P.
Kessler. The Sales Tax Bureau appeared by Peter Crotty, Esq.
(Andrew Haber, Esq., of counsel).

ISSUES

I. Whether an agreement between applicant and Tri-
Continental Leasing Company constituted an agreement to purchase
or an agreement to lease computer terminals.

II. If the transaction constituted a lease agreement, whether the entire amount of the monthly rental payment was subject to tax.

III. Whether the Sales Tax Bureau made an assessment of additional tax more than three years after the filing of a return.

FINDINGS OF FACT

1. Applicant, S & K Wine & Liquor Corp. (hereinafter "S & K"), was a wholesale wine and liquor distributor in the Syracuse, New York, area.

2. On July 2, 1976, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$1,190.76 (plus penalty and interest) for the period March 1, 1973 through February 29, 1976.

3. Applicant timely applied for a hearing to review the aforementioned determination.

4. On January 5, 1973, applicant entered into an agreement with Computer Communications Network, Inc. of Nashville, Tennessee (hereinafter "CCN"), wherein CCN agreed to provide applicant with a computer billing service.

5. In order for CCN to provide the agreed billing service, it was necessary for the applicant to have computer terminals available. These terminals were provided by Tri-Continental Leasing Company of Saint Louis, Missouri, pursuant to an agreement executed by Irving Smith as the president of S & K. This agreement referred to Tri-Continental Leasing Company as the lessor and S & K as the lessee and also referred to two Burroughs TC-500

Computer Terminals as the "Equipment Leased". The agreement contained a provision for sixty, monthly rental payments of \$472.50 each and stated that the total cost of the terminals to lessor would be \$21,000.00.

6. CCN was subsequently acquired by Automatic Data Processing, Inc. Thereafter, monthly charges for the computer billing service, (as well as the monthly rental payments for the computer terminals) were billed to S & K by ADP Autonet, Inc., a subsidiary of Automatic Data Processing, Inc. The reason for the billing by ADP Autonet, Inc. for the computer terminals and not by Tri-Continental Leasing Company was not established at the hearing.

7. The Sales Tax Bureau determined that applicant leased the computer terminals; therefore, the monthly rental payments were subject to sales and use tax.

8. Applicant contended that the agreement with Tri-Continental Leasing Company was a five-year lease purchase agreement and that the purchase occurred on January 5, 1973; therefore, applicant contended that the Sales Tax Bureau was barred by the three-year statute of limitations from issuing the above determination. No documentary or other substantial evidence was submitted by applicant to show that the agreement between Tri-Continental Leasing Company and applicant was other than a lease agreement.

9. In the alternative, applicant argued that if the monthly payments were found to be taxable, a reduction in the amount of tax found due should be made, since a portion of the sixty monthly payments constituted a charge of interest or for financing.

CONCLUSIONS OF LAW

A. That applicant's agreement with Tri-Continental Leasing Company identifying applicant as the lessee and the computer terminals as the equipment leased, was an agreement to lease computer terminals and not an agreement to purchase said terminals.

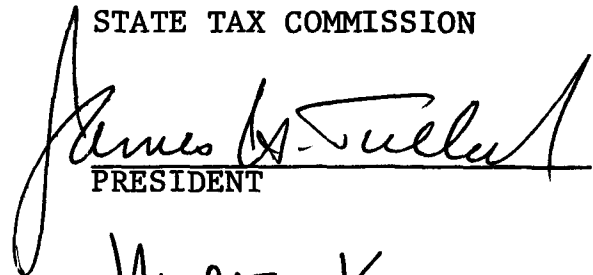
B. That the monthly rental payments in the amount of \$472.50 constitute a "receipt" within the meaning and intent of section 1101(b)(3) of the Tax Law, and that such receipts are subject to the imposition of sales tax pursuant to section 1105(a) of the Tax Law.

C. That the Sales Tax Bureau was not barred from imposing sales tax for those periods which ended within three years of the assessment (July 2, 1976), pursuant to section 1147(c) of the Tax Law. That since the period ending May 31, 1973 was outside the period within which an assessment may be made, the Sales Tax Bureau is hereby directed to reduce the Notice of Deficiency issued July 2, 1976 by the amount of tax, penalty and interest due for the aforementioned period.

D. That the application of S & K Wine & Liquor Company is granted to the extent indicated in Conclusion of Law "C," above, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER