

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Bock Florist, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 9/1/72-11/30/74. :

State of New York  
County of Albany

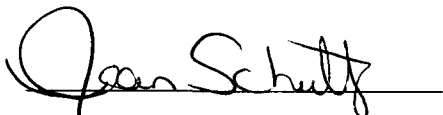
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by mail upon Bock Florist, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

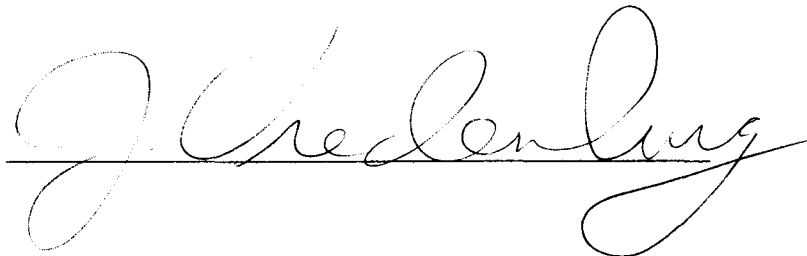
Bock Florist, Inc.  
371 Hooker Ave., Box 445  
Poughkeepsie, NY 12601

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
12th day of December, 1980.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Bock Florist, Inc. :

AFFIDAVIT OF MAILING

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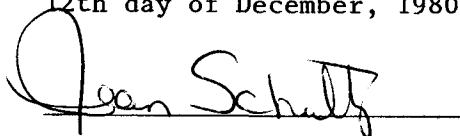
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by mail upon Charles O'Donnell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

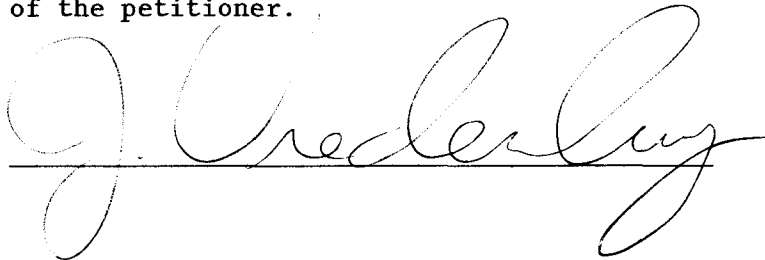
Mr. Charles O'Donnell  
2 Cannon St.  
Poughkeepsie, NY 12601

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  
12th day of December, 1980.

  
Jean Schultz

  
Jay Vredenburg

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

December 12, 1980

Bock Florist, Inc.  
371 Hooker Ave., Box 445  
Poughkeepsie, NY 12601

Gentlemen:

Please take notice of the Decision 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Charles O'Donnell  
2 Cannon St.  
Poughkeepsie, NY 12601  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
BOCK FLORIST, INC.	:	DECISION
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, 1972 through	:	
November 30, 1974.	:	

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Petitioner, Bock Florist, Inc., 371 Hooker Avenue, Poughkeepsie, New York 12601, filed a petition 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, 1972 through November 30, 1974 (File No. 15448).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 21, 1979 at 9:15 A.M. Petitioner appeared by Charles O'Donnell, Jr., Esq. and Godfrey V. Goldman, PA. The Audit Division appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner's sales of "flowers-by-wire" are subject to New York State and local sales tax.

II. Whether the results of a field audit pertaining to unsubstantiated exempt sales are correct.

FINDINGS OF FACT

1. Petitioner operated a flower shop and greenhouse within the boundaries of the City of Poughkeepsie and had business sales of "flowers-by-wire" which involved the wiring of its customer's order to a second florist, either out-of-state or in another locality within New York State, for fulfillment by the second florist.

2. On December 11, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Bock Florist, Inc. for the period September 1, 1972 through November 30, 1974, in the amount of \$7,257.34 tax, plus penalties and interest. The Notice was issued prior to the completion of a field audit, since petitioner was advised not to sign a Consent Extending Period of Limitation for Assessment. As the basis for the assessment, the Audit Division determined that all the exempt sales reported on the New York State and local sales and use tax returns filed by petitioner for the period at issue were taxable.

3. On audit, the Audit Division determined that petitioner:

- (a) Failed to charge sales tax on sales of "flowers-by-wire" involving out-of-state florists and recipients. The Division held these sales taxable at the rate of 6 percent based on the rate in effect at petitioner's place of business. The tax due on these sales was \$4,826.52.
- (b) Charged sales tax at the rate of 4 percent on sales of "flowers-by-wire" involving in-state florists regardless of where the flowers were delivered. The Audit Division held these sales to be taxable at 6 percent based on the rate in effect at petitioner's place of business. The tax due on these sales was \$1,070.86.
- (c) Could substantiate only 17.5 percent of the exempt sales reported on petitioner's sales tax returns. The Division held the balance of the exempt sales taxable. The tax due on these sales amounted to \$1,517.32 using a tax rate of 4 percent.

The total tax due as the result of the audit was \$7,414.70. The Notice of Determination issued December 11, 1975 was not revised; therefore, the tax at issue remains at \$7,257.34.

4. It was the Audit Division's position that the sales of "flowers-by-wire" are subject to tax at the point where the sale originates.

5. Petitioner filed a timely protest to the above Notice on January 19, 1976.

6. Petitioner contended that the taxation of flower sales wherein delivery occurred outside the State was violative of the commerce clause of the Federal Constitution. Petitioner further contended that, at most, the amount of service rendered to petitioner's New York State customer would be subject to tax since the service is the only local activity with respect to each sale.

7. Petitioner contended that its treatment of in-state deliveries, other than those made in the City of Poughkeepsie, was based on instructions received from the Audit Division at the time the state-wide tax was imposed.

8. Upon submission of additional information, the Audit Division agreed that substantiated exempt sales were 24.4 percent of those recorded. The amount of exempt sales which remain unsubstantiated is \$28,033.00.

9. Petitioner acted in good faith.

#### CONCLUSIONS OF LAW

A. That the sales tax imposed under Articles 28 and 29 of the Tax Law is a "destination tax", that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate.

B. That petitioner's sales of "flowers-by-wire" where the floral arrangements were delivered by out-of-state florists to out-of-state addresses are not subject to the New York State and local sales tax.

C. That petitioner's sales of "flowers-by-wire" where the floral arrangements were delivered by in-state florists to addresses in the State are subject to the New York State and local sales tax as provided by sections 1105(a) and 1213 at the rate in effect at the point of delivery.

D. That the unsubstantiated exempt sales in Finding "8" are subject to tax at the rate in effect in the taxing jurisdiction in which delivery was made.

E. That the penalties and interest in excess of the minimum statutory rate are canceled.

F. That the petition of Bock Florist, Inc. is granted to the extent indicated in Conclusions "B", "C", "D" and "E" above. The Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 11, 1975; and that such tax due shall be together with interest at the minimum statutory rate. Except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER