

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Artex Furniture Corp. :  
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 12/1/71 - 11/30/74. :

AFFIDAVIT OF MAILING

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Artex Furniture Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Artex Furniture Corp.  
35-50 Junction Blv.  
Corona, NY 11368

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  
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

In the Matter of the Petition  
of  
Artex Furniture Corp.

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 12/1/71 - 11/30/74.

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Murray Berger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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.

Sworn to before me this  
22nd day of February, 1980.

Joanne Knapp

of the petitioner.

J. Vanley

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

February 22, 1980

Artex Furniture Corp.  
35-50 Junction Blv.  
Corona, NY 11368

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:

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  
Murray Berger  
222-26 Union Tpke.  
Flushing, NY 11364  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
ARTEX FURNITURE 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 Periods December 1,	:	
1971 through November 30, 1974.	:	

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Applicant, Artex Furniture Corp., 35-50 Junction Boulevard, Corona, New York 11368, 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 December 1, 1971 through November 30, 1974 (File No. 10026).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 10, 1977. Applicant appeared by Murray Berger, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel). Said hearing was adjourned in contemplation of a settlement of the issues herein by written stipulation, subject to a continuation of said hearing in the event the stipulation was not executed and approved.

A continuation of said formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1978. Applicant did not appear either personally or by representative. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether additional sales taxes were due from applicant for the period December 1, 1971 through November 30, 1974.

FINDINGS OF FACT

1. On March 14, 1975, 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 the period December 1, 1971 through November 30, 1974, in the amount of \$45,829.62, plus penalty and interest of \$11,972.89, for a total of \$57,802.51. Applicant timely filed an application for redetermination or refund.

2. Said audit utilized external indices in making the assessment for sales taxes due from applicant. Said indices consisted of applicant's bank statements and previously-audited sales tax returns for 1965 to 1969. No other books and records were available for audit.

3. At the hearing on June 10, 1977, counsel for the State Tax Commission and applicant agreed to enter into a written stipulation of settlement to be submitted for the approval and signature of Peter Crotty, then Deputy Counsel to the Department of Taxation and Finance. Said stipulation was conditioned on the following:

a. The submission by applicant of photocopies of checks to the Sales Tax Bureau to substantiate applicant's claim that personal loans were made to the corporation and that corporate checks were issued to lending companies pursuant to financing agreements.

b. The proposed stipulation was to be completed within sixty days from June 10, 1977.

c. Should said stipulation not be completed within the sixty-day period, the hearing would be continued on a rescheduled date.

4. Applicant submitted twelve checks, totaling approximately \$15,000.00, a sum far less than the amount it needed to substantiate.

5. No stipulation was made within said sixty-day period, or at any time thereafter.

CONCLUSIONS OF LAW

A. That the additional sales taxes found to be due by the Sales Tax Bureau, based on an audit of external indices, were determined "from such information as may be available," in accordance with the meaning and intent of Section 1138(a) of the Tax Law.

B. That applicant failed to sustain the burden of proof required to show that the additional taxes due (as determined by the Sales Tax Bureau) were incorrect.

C. That the application of Artex Furniture Corp. is hereby denied.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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Artex Furniture Corp. :

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for the Period 12/1/71 - 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 21st day of March, 1980, he served the within notice of Determination by mail upon Artex Furniture Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Artex Furniture Corp.  
340 E. Shore Dr.  
Massapequa, NY 11758  
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  
21st day of March, 1980.

Joanne Knapp

Jay Vredenburg