

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Fauna Pet Corp. :

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 12/1/72-11/30/75. :

State of New York
County of Albany

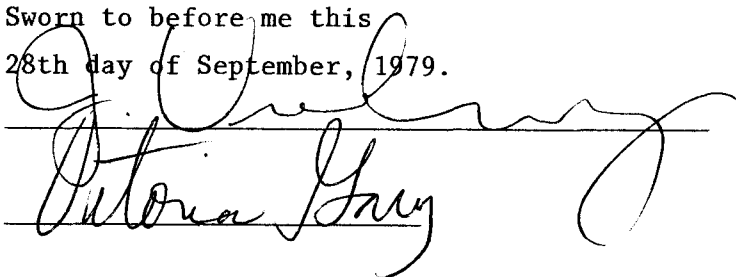
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Fauna Pet Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fauna Pet Corp.
140 E. 14th St.
New York, NY 10003

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
28th day of September, 1979.


Victoria Gray

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Fauna Pet Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
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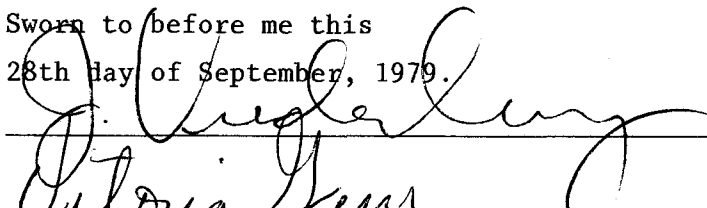
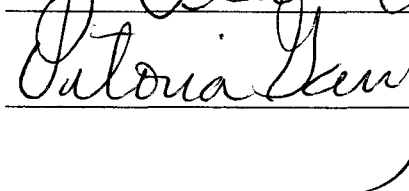
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Benjamin Goldberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Benjamin Goldberg
60 E. 42nd St.
New York, NY 10003

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
28th day of September, 1979.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Fauna Pet Corp.
140 E. 14th St.
New York, NY 10003

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,

A handwritten signature in dark ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative
Benjamin Goldberg
60 E. 42nd St.
New York, NY 10003
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
FAUNA PET 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 December 1, 1972 through	:	
November 30, 1975.	:	

Applicant, Fauna Pet Corp., 140 East 14th Street, New York, New York 10003, 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, 1972 through November 30, 1975 (File No. 14751).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 12, 1978 at 9:15 A.M. Applicant appeared by Benjamin Goldberg, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether applicant is liable for sales or use tax on the purchase of food consumed by animals held for sale in the regular course of business.

II. Whether the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued by the Sales Tax Bureau was proper and correct.

FINDINGS OF FACT

1. On April 21, 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 the period December 1, 1972 through November 30, 1975.

It was issued for \$3,636.94, plus penalty and interest of \$1,289.02, for a total of \$4,925.96.

2. Applicant operated a retail pet shop.

3. The audit conducted by the Sales Tax Bureau disclosed that applicant failed to pay a sales or use tax on purchases of miscellaneous expense items, fixed assets, and pet food. The taxes of \$419.00 which were assessed on the expense items and fixed assets are not at issue.

The amount of pet food purchases was determined from a general ledger account entitled "Food and Supplies," as reported on the "cost of goods sold" section of applicant's Federal income tax returns. Such purchases totaled \$42,894.00 for the audit period, with tax due thereon of \$3,217.94.

4. Applicant submitted substantial documentary evidence to show that the taxable purchases determined by the Sales Tax Bureau were incorrect. The Sales Tax Bureau included in taxable purchases such items as cash purchases of pet food and other supplies on which sales tax had been paid. It also included packaging materials purchased for resale.

The amount of purchases, excluding items on which sales tax had been paid and also packaging materials purchased for resale, was \$24,495.00 for pet food and \$4,421.00 for supplies.

Applicant conceded that tax is owing on said supplies.

5. Applicant contended that the pet food is exempt from the imposition of sales or use tax under section 1101(b)(4)(i) of the Tax Law as a physical component part of tangible personal property to be sold.

Applicant further contended that the pet food is exempt by virtue of 20 NYCRR 527.5(b)(2), which provides that "maintaining, servicing or repairing tangible personal property is not taxable if the property maintained, serviced or repaired is held for sale in the regular course of business."

6. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1101(b) (4) (i) of the Tax Law defines retail sale to be "a sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property...."

B. That applicant's purchases of pet food constituted retail sales of tangible personal property not held for resale as such or as a physical component part of tangible personal property; therefore, applicant is liable for sales tax on such purchases.

C. That the Sales Tax Bureau's assessment was erroneous as indicated in Finding of Fact "4". The amount of purchases which was held subject to tax is hereby reduced to \$24,495.00 for pet food and \$4,421.00 for supplies.

D. That the application of Fauna Pet Corp. is granted to the extent indicated in Conclusion of Law "C"; that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 21, 1976, together with interest computed at the minimum statutory rate; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO.....Mr.. Coburn.....

No better address. Please file.

10/12/79

Joseph Chyrywaty

TA-26 (4-76) 25M

STATE OF NEW YORK

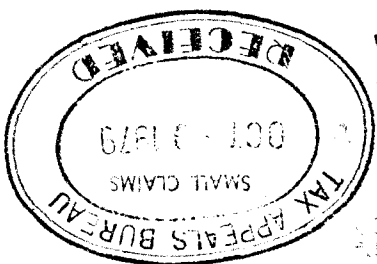
Department of Taxation and Finance

TAX APPEALS BUREAU

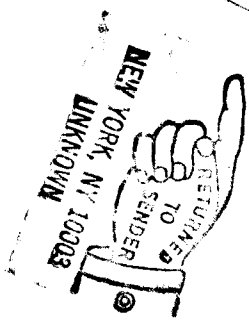
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76/05/77

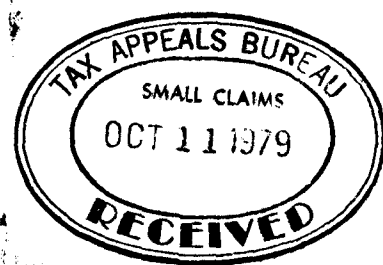


Fauna Pet Corp.
140 E. 14th St.
New York, NY 10003





COOPER
STATION





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

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
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