

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Classic Pools Inc. :
& William Cohen, Individ. & as an Officer : 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 6/1/70-5/31/73. :

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 9th day of November, 1979, he served the within notice of Determination by mail upon Classic Pools Inc., & William Cohen, Individ. & as an Officer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Classic Pools Inc.
& William Cohen, Individ. & as an Officer
Drawer 689
South Fallsburg, NY 12779
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
9th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Classic Pools Inc. :
& William Cohen, Indiv. & as an Officer : 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 6/1/70-5/31/73. :

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 9th day of November, 1979, he served the within notice of Determination by mail upon Elias Greene 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. Elias Greene
Rt. 42
South Fallsburg, NY

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
9th day of November, 1979.

Joanne Krapp

J. Vredenburg

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

November 9, 1979

Classic Pools Inc.
& William Cohen, Individ. & as an Officer
Drawer 689
South Fallsburg, NY 12779

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
Elias Greene
Rt. 42
South Fallsburg, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

CLASSIC POOLS, INC. :

and :

WILLIAM COHEN :

Individually and as an Officer :

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 June 1, 1970 through May 31, 1973. :

Applicant, Classic Pools, Inc., and William Cohen, individually and as an officer, Drawer 689, South Fallsburg, New York 12779, 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 June 1, 1970 through May 31, 1973 (File No. 12964).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on July 27, 1977, and was continued on March 31, 1978 at 1:00 P.M. Applicant appeared by Elias Gerald Greene, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, and Francis Cosgrove, Esqs., of counsel).

ISSUE

Whether additional sales tax was due from Classic Pools, Inc. and William Cohen, individually and as officer, for the period June 1, 1970 through May 31, 1973.

FINDINGS OF FACT

1. During the period under review, William Cohen was president of Classic Pools, Inc. Classic Pools, Inc. manufactured and sold in-ground swimming pools, pool supplies and services. It maintained a showroom in Fallsburg, and must,

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

New York and a manufacturing plant in South Fallsburg, New York.

2. William Cohen as president of Classic Pools, Inc. executed consents extending the period of limitation for assessment of sales and use taxes due for the period June 1, 1970 through May 31, 1973 to December 20, 1975.

3. On January 20, 1975, as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Classic Pools, Inc., and William Cohen, individually and as an officer. Said notice imposed an additional tax of \$3,890.00, plus penalty and interest of \$1,569.54, for a total of \$5,459.54 for the period June 1, 1970 through May 31, 1973.

4. On audit, the Sales Tax Bureau's auditor found applicant's books and records to be incomplete. The auditor found that applicant could not substantiate exempt sales. This resulted in a disallowance of exempt sales in the amount of \$16,500.00 for the audit period June 1, 1970 through May 31, 1973. He also found that there was a gap in applicant's sales records for the period November 1, 1970 through February 28, 1972. Sales for this period were projected on amounts reported by applicant on returns filed for subsequent periods to be \$50,000.00. The total results of such findings was additional tax due of \$3,890.00.

5. Applicants timely applied for a hearing to review the determination of the deficiencies in sales tax.

6. Applicants appeared at the White Plains District Tax Office for a conference conducted by the Sales Tax Bureau. As a result thereof, applicant's records relating to bank deposits made for the period December 1, 1972 through May 31, 1973 were secured by the Sales Tax Bureau. The Bureau found that deposits of \$239,712.00 were made. They also found that sales reported by applicants on returns filed were \$13,215.00. \$273,697.00 was determined to represent additional taxable sales and a tax due of \$13,421.84 was computed.

The first of these is the fact that the
 second of these is the fact that the
 third of these is the fact that the
 fourth of these is the fact that the
 fifth of these is the fact that the
 sixth of these is the fact that the
 seventh of these is the fact that the
 eighth of these is the fact that the
 ninth of these is the fact that the
 tenth of these is the fact that the

The following is a list of the names of the persons who have been
 named in the above mentioned report, and who are now in the
 custody of the United States Marshal at New York, and who are
 being held for the purpose of being examined by the grand jury
 of the Southern District of New York, in connection with the
 above mentioned case.

[illegible]

7. On March 8, 1976, the Sales Tax Bureau issued a second Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Classic Pools, Inc. and William Cohen, individually and as an officer, imposing additional tax due of \$13,421.84, plus penalty and interest of \$5,207.43 for a total of \$18,629.27 for the period December 1, 1972 through May 31, 1973.

8. Applicants timely applied for a hearing to review the aforementioned determination of the deficiencies in sales tax.

9. Applicants, Classic Pools, Inc. and William Cohen, individually and as an officer, offered no documentary or other substantial evidence to show that the notices of determination and demand for payment of sales and use taxes due issued against them were improper.

10. On July 9, 1975, applicants made a remittance of \$5,000.00 to the Sales Tax Bureau.

CONCLUSIONS OF LAW

A. That where necessary, the Sales Tax Bureau may estimate sales tax due on the basis of available records, in accordance with the intent and meaning of section 1138(a) of the Tax Law. Since applicant failed to introduce documents which disprove the deficiency determined to be due by the Sales Tax Bureau in its notices of determination and demand for payment of sales and use taxes due issued January 20, 1975 and March 8, 1976, said deficiencies are correct.

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

B. That the Sales Tax Bureau is instructed to modify the notices of deficiency issued January 20, 1975 and March 8, 1976, in accordance with Finding of Fact "10". Except as so modified, the notices are otherwise sustained; and that the application of Classic Pools, Inc. and William Cohen, individually and as an officer, is denied.

DATED: Albany, New York

NOV 9 1979

STATE TAX COMMISSION

James H. Fuller
PRESIDENT

Milton Krumm
COMMISSIONER

Shirley H. Glick
COMMISSIONER

... ..
... ..
... ..
... ..

NOV 9 1952

Walter K...

...