STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
William Cohen :
d/b/a William Cohen Iron Works 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 12/1/71-5/31/74. :

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 9th day of November, 1979, he served the within notice of Determination by mail upon William Cohen, d/b/a William Cohen Iron Works, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Cohen
d/b/a William Cohen Iron Works
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

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of	:	
William Cohen	:	
d/b/a William Cohen Iron Works		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 12/1/71-5/31/74.	:	

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 9th day of November, 1979, he served the within notice of Determination by mail upon Elias Gerald 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 Gerald Greene
Route 42
S. 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 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 Knapp

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

November 9, 1979

William Cohen
d/b/a William Cohen Iron Works
Drawer 689
South Fallsburg, NY 12779

Dear Mr. Cohen:

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 Gerald Greene
Route 42
S. Fallsburg, NY 12779
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WILLIAM COHEN d/b/a WILLIAM COHEN IRON WORKS	:	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, 1971 to May 31, 1974	:	

Applicant, William Cohen d/b/a William Cohen Iron Works, 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 December 1, 1971 to May 31, 1974 (File No. 12966).

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 at 1:15 P.M. Applicant appeared by Elias Gerald Greene, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

Whether applicant owes sales tax for the period at issue.

FINDINGS OF FACT

1. On January 20, 1975 pursuant to an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, William Cohen d/b/a William Cohen Iron Works, in the amount of $25,002.00, plus penalty and interest of $6,875.51, for a total of $31,877.51.

2. Applicant, William Cohen d/b/a William Cohen Iron Works had been engaged in the sale and construction of in-ground swimming pools. The business which was begun in 1965 was not in operation during the periods at issue, according to the Federal income tax returns for 1972, 1973 and 1974. In 1972 the equipment and building were leased for $17,500.00, and in 1973 and 1974, total rentals were $20,000.00 for each year. Except for depreciation schedules for 1972, 1973 and 1974, no documentary or other substantial evidence was offered as to the percentage of the total rental that the equipment represented.

3. Applicant, William Cohen d/b/a William Cohen Iron Works, filed sales tax returns for the period December 1, 1971 through February 28, 1973. These returns reported zero gross sales, zero taxable sales and zero tax due.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a sales tax on every retail sale of tangible personal property. Section 1101(b)(5) of the Tax Law defines sale, selling or purchasing as any transfer of title possession, rental, lease or license to use; therefore, William Cohen d/b/a William Cohen Iron Works is responsible for the imposition of sales tax during the periods at issue, on the rental of his equipment.

B. That the depreciation schedules alone are insufficient for determining the respective percentages of real or personal property. Since applicant did not show what portion of the rental was attributable to real property, the entire rental for each year at issue is subject to sales tax.

C. That the Sales Tax Bureau is instructed to reduce the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on January 20, 1975 against William Cohen d/b/a William Cohen Iron Works, in accordance with Conclusions of Law "A" and "B" and Finding of Fact "2". Except as so modified, the notice is otherwise sustained and the application of William Cohen d/b/a William Cohen Iron Works is in all other respects denied.

DATED: Albany, New York

NOV 9 1979

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

NOV 9 1979