

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
East Coast Pharmacal 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 of the Tax Law  
for the Years 1967-1973. :

State of New York  
County of Albany

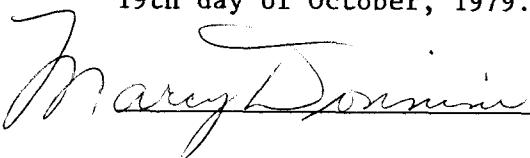
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Determination by mail upon East Coast Pharmacal Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


East Coast Pharmacal Inc.  
57-37 Main St.  
Flushing, NY 11355

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  
19th day of October, 1979.

  
Mary Dominici

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
East Coast Pharmacal Inc. :

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for Redetermination of a Deficiency or a Revision :  
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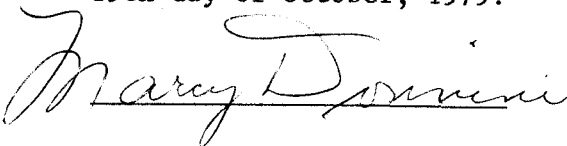
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Determination by mail upon Stanley R. Goldstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

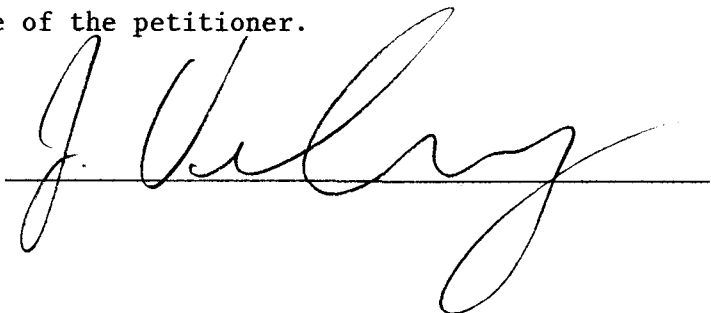
Esq. Stanley R. Goldstein  
575 Lexington Ave., Suite 2605  
New York, NY 10022

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  
19th day of October, 1979.

  
Mary Donvini

  
J. Vredenburg

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

October 19, 1979

East Coast Pharmacal Inc.  
57-37 Main St.  
Flushing, NY 11355

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  
Stanley R. Goldstein  
575 Lexington Ave., Suite 2605  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
EAST COAST PHARMACAL, INC.	:	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 March 1, 1967 through	:	
November 30, 1973.	:	

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Applicant, East Coast Pharmacal, Inc., 57-37 Main Street, Flushing, New York 11355, 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 March 1, 1967 through November 30, 1973 (File No. 12930).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 15, 1978 at 9:15 A.M. Applicant appeared by Stanley R. Goldstein, Esq. (Harold Kestenbaum, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Jr., Esq., of counsel).

ISSUES

I. Whether applicant is liable as a purchaser pursuant to a sale, transfer, or assignment in bulk of the business assets of Libmar Chemists, Inc., otherwise than in the ordinary course of business.

II. Whether there was a transfer of any business asset of Libmar Chemists, Inc. to applicant.

FINDINGS OF FACT

1. On May 2, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice #90,773,302P) against applicant, East Coast Pharmacal, Inc. (purchaser), for the period March 1, 1967 through November 30, 1973, in the amount of \$34,279.81, plus penalty and interest of \$15,096.85, for a total of \$49,376.66. Said amount was determined to be due from Libmar Chemists, Inc., representing applicant's liability in accordance with section 1141(c) of the Sales Tax Law. By letter dated May 14, 1974, applicant protested the aforementioned Notice on the grounds that it never purchased any business assets from Libmar Chemists, Inc.

2. On July 13, 1973, East Coast Pharmacal, Inc. entered into an executory contract with Libmar Chemists, Inc. to purchase in bulk its (Libmar's) retail pharmacy located at 23 St. James Place, New York, New York. East Coast Pharmacal, Inc. deposited \$2,800.00 with Libmar Chemists, Inc. as a down payment.

3. On October 10, 1973, the agreement between East Coast Pharmacal, Inc. and Libmar Chemists, Inc. was cancelled and became ineffective, due to alleged breaches of contract by Libmar Chemists, Inc. The attorneys for Libmar Chemists, Inc. retained the \$2,800.00 deposit, which was to be held in escrow for payment of any sales tax owed by Libmar Chemists, Inc.

4. On October 15, 1973, applicant East Coast Pharmacal, Inc. entered into a lease for a 5-year period effective November 1, 1973 with the New York City Housing Authority, the landlord of the premises formerly occupied by Libmar Chemists, Inc. Applicant agreed to pay back rent owed by Libmar Chemists, Inc. to said landlord, which amounted to \$3,777.19. Libmar Chemists, Inc. abandoned the premises on October 10, 1973.

5. By letter dated March 13, 1975, the Sales Tax Bureau notified applicant that as a result of additional information, Notice #90,773,302P had been revised to limit the purchaser's liability to \$6,577.19, which is comprised of the \$3,777.19 in back rent due the New York City Housing Authority by Libmar Chemists, Inc. and the \$2,800.00 down payment. On April 2, 1975, applicant protested the revised Notice of Determination.

#### CONCLUSIONS OF LAW

A. That the agreement between East Coast Pharmacal, Inc. and Libmar Chemists, Inc. to purchase the latter's business was never consummated.

B. That there was no transfer or assignment of any business assets by Libmar Chemists, Inc. to East Coast Pharmacal, Inc.

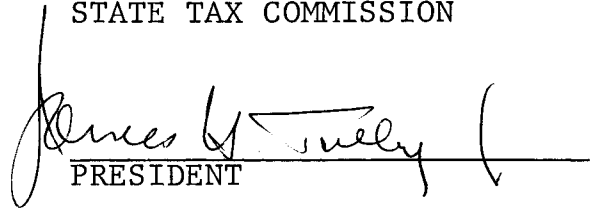
C. That applicant, East Coast Pharmacal, Inc., is not liable as the purchaser of a business asset from Libmar Chemists, Inc., within the intent and meaning of section 1141(c) of the Tax Law.

D. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 2, 1974 and revised on March 13, 1975 is hereby cancelled.

DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER