

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

New York Athletic Supply, Co., 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 & 29 of the Tax Law
for the Period 6/1/68-5/31/74.

State of New York
County of Albany

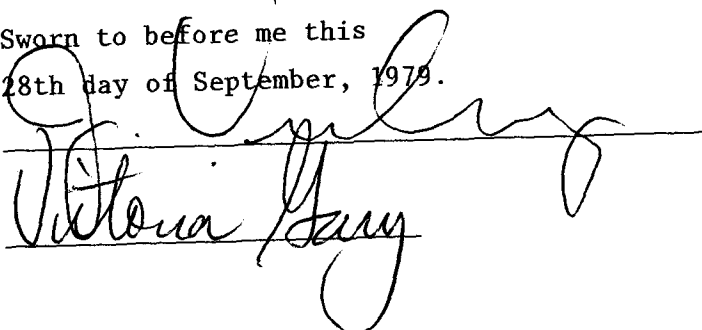
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon New York Athletic Supply, Co., Inc., the petitioner in the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

New York Athletic Supply, Co., Inc.
301 E. 149th St.
Bronx, NY 10451

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 Gary

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

New York Athletic Supply, Co., Inc. :

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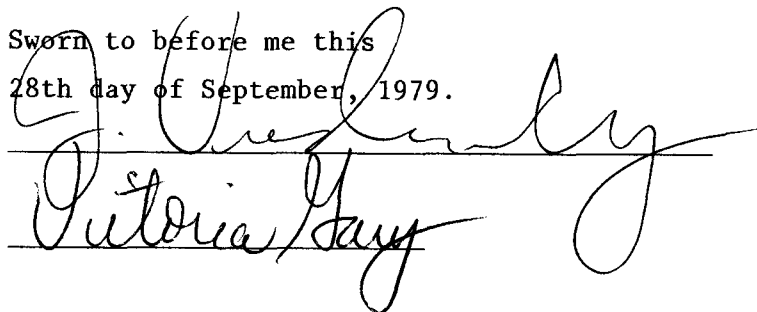
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Lawrence G. Wasserman the representative of the petitioner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

Mr. Lawrence G. Wasserman
136 Greenway Rd.
Lido Beach, NY 11561

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.


Victoria G. [unclear]

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

New York Athletic Supply, Co., Inc.
301 E. 149th St.
Bronx, NY 10451

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,



cc: Petitioner's Representative
Lawrence G. Wasserman
136 Greenway Rd.
Lido Beach, NY 11561
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
NEW YORK ATHLETIC SUPPLY CO., 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 June 1, 1968 through May 31,	:	
1974.	:	

Applicant, New York Athletic Supply Co., Inc., 301 East 149th Street, Bronx, New York 10451, 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, 1968 through May 31, 1974 (File No. 15327).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1977 at 1:15 P.M., and was continued on January 11, 1978 at 10:45 A.M. Applicant appeared by Lawrence G. Wasserman, CPA, and by Norman Mordkofsky, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt and Abraham Schwartz, Esqs., of counsel).

ISSUES

I. Whether the Sales Tax Bureau's audit of applicant's books and records properly reflected applicant's additional sales and use tax liability.

II. Whether applicant is entitled to a refund of penalty and interest above the minimum statutory rate, where the penalty and interest were imposed for the late filing of sales and use tax returns.

FINDINGS OF FACT

1. For the period June 1, 1968 through August 31, 1972, applicant relied on its accountant to file the required New York state and local sales and use tax returns. Checks that applicant drew in payment of sales and use taxes were given to the accountant for remittance with the returns. The returns and checks were not received by the Sales Tax Bureau and notifications of delinquency were issued to applicant. Applicant filed late returns and paid the taxes which were reported to be due, plus penalty and interest.

Applicant investigated the cause for the delinquency. It was found that by substituting the payee's name on checks with either his or that of a fictitious company, applicant's accountant had been able to embezzle applicant's funds. The accountant, a public accountant, was indicted by the Bronx County Grand Jury and subsequently pleaded guilty to grand larceny.

2. Applicant filed an Application for Credit or Refund of State and Local Sales or Use Tax with the Sales Tax Bureau, requesting a refund of the penalty and interest paid on the late filing of returns for the period June 1, 1968 through August 31, 1972.

3. Applicant's books and records were examined by the Sales Tax Bureau for the audit period June 1, 1968 through May 31, 1974. Said audit resulted in the issuance of a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for additional tax due of \$20,582.02, plus penalty and interest.

Applicant appeared at an informal conference which had been scheduled by the Sales Tax Bureau in its Bronx District Office. As a result of the conference, the Sales Tax Bureau issued a Notice of Assessment Review in which the tax due was revised to \$13,105.22, plus penalty and interest.

4. Applicant timely filed for a hearing to review the June 16, 1976 Notice of Assessment Review issued by the Sales Tax Bureau. The February 23, 1977 hearing was adjourned for the purpose of re-auditing applicant's records.

5. As a result of said audit, the Sales Tax Bureau found applicant's additional sales and use tax liability to be \$3,990.35, plus simple interest of \$1,638.71, for a total amount due of \$5,629.06. Both parties agreed and stipulated that the additional tax liability found due on the re-audit was correct.

6. The Sales Tax Bureau also found that the penalty and interest which were paid on the late filing of returns exceeded the minimum statutory rate of interest by \$5,350.78.

7. Applicant contends that the penalty and interest in excess of the minimum statutory rate which it paid with the late-filed sales tax returns should be abated. Applicant claims that this should be done on the grounds that the sales and use tax returns would have been timely filed and paid if it were not for the criminal acts of its accountant.

CONCLUSIONS OF LAW

A. That the additional sales and use taxes found due by the Sales Tax Bureau on a re-audit of applicant's books and records (Finding of Fact "5") is proper and correct.

B. That the penalties paid by applicant on the late filing of returns are cancelled and the interest is reduced to the minimum statutory rate which is indicated in Finding of Fact "6".

C. That the application of New York Athletic Supply Co., Inc. is granted to the extent indicated in Conclusions of Law "A" and "B"; that the Sales Tax Bureau is hereby directed to modify the Notice of Assessment Review issued

June 16, 1976 in accordance with Finding of Fact "5", and that a credit is to be allowed on said revised Notice for penalty and interest which applicant paid over and above the statutory rate per Finding of Fact "6"; 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