

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Septum Printing 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 12/1/67-5/31/74. :

State of New York  
County of Albany

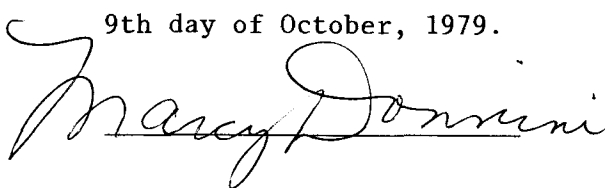
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Hyman Dann the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

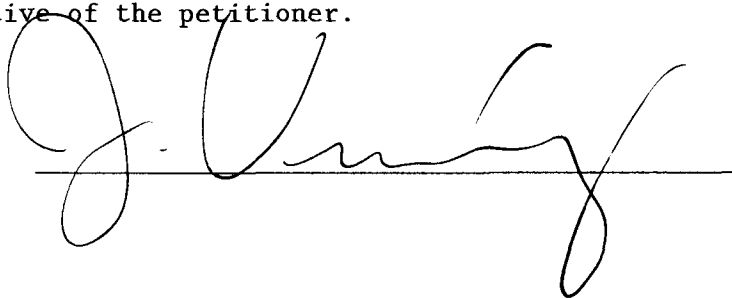
Mr. Hyman Dann  
160 W. End Ave.  
New York, NY 10023

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 October, 1979.

  
Nancy Donrini

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
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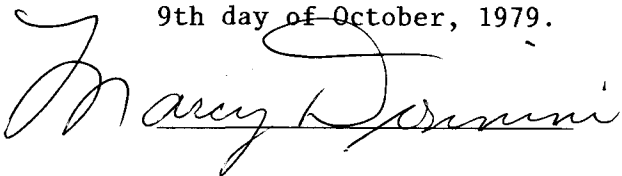
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Septum Printing Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

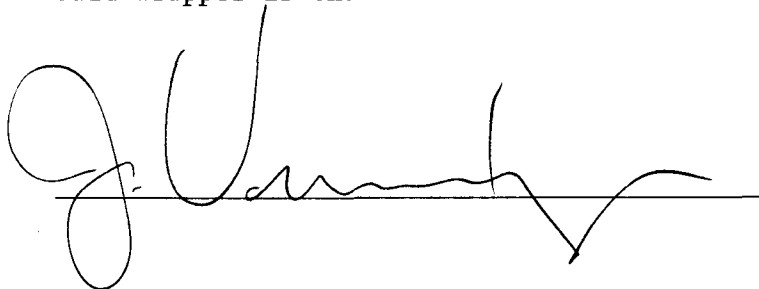
Septum Printing Corp.  
3 Neil Ct.  
Oceanside, NY 11572

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 October, 1979.

  
Mary P. Dominici

  
Jay Vredenburg

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

October 9, 1979

Septum Printing Corp.  
3 Neil Ct.  
Oceanside, NY 11572

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

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Hyman Dann  
160 W. End Ave.  
New York, NY 10023  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
SEPTUM PRINTING CORPORATION	:	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, 1967 through May 31,	:	
1974.	:	

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Applicant, Septum Printing Corporation, 3 Neil Court, Oceanside, New York 11572, 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, 1967 through May 31, 1974 (File No. 11778).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 7, 1979 at 1:15 P.M. Applicant appeared by Hyman Dann, Public Accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau's determination of sales and use taxes due for the period December 1, 1967 through May 31, 1974, based on an audit of applicant's available records, was correct.

FINDINGS OF FACT

1. On September 24, 1975 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, Septum Printing Corporation, for the period December 1, 1967 through May 31, 1974. Said Notice was issued for tax due of \$16,966.65, plus penalty and interest of \$6,794.17, for a total of \$23,760.82.

2. Applicant, Septum Printing Corporation, operated a printing business located at 3 Neil Court, Oceanside, New York. During the period at issue, applicant did not file New York state and local sales and use tax returns, and was not a registered sales tax vendor until an audit was performed on its books and records.

3. On audit, the Sales Tax Bureau analyzed sales for the test periods of June 1, 1971 through August 31, 1971, June 1, 1972 through August 31, 1972 and September 1, 1973 through November 30, 1973, to determine the ratio of taxable sales to gross sales. This analysis resulted in taxable percentages of 2%, 14.4% and 25.6%, respectively. The Sales Tax Bureau computed taxable sales for the audit period of \$280,640.06 by applying 2% to gross sales for the period December 1, 1967 through November 30, 1971, 14.4% for the period December 1, 1971 through November 30, 1972, and 25.6% for the period December 1, 1972 through May 31, 1974.

The Sales Tax Bureau also reviewed applicant's acquisition of fixed assets to determine any use tax liability. It was ascertained that applicant acquired assets totaling \$212,896.43. The Sales Tax Bureau asserted that purchases of \$14,126.12 were subject to use tax because it was unable to determine from applicant's records the nature of the purchase or whether sales tax was paid. Said purchases represented amounts capitalized in accounts entitled "leasehold improvements", "miscellaneous equipment" and "machine improvements".

The above findings disclosed a tax liability of \$19,017.51. Credits were allowed on the audit for sales tax erroneously paid on exempt purchases, which reduced said amount to \$16,966.65.

4. Applicant submitted resale certificates at a pre-hearing conference held on September 17, 1976, which resulted in a reduction of the taxable

percentages to 1.21% for the period June 1, 1971 through August 31, 1971, 9.05% for the period June 1, 1972 through August 31, 1972 and 13.86% for the period September 1, 1973 through November 30, 1973; thus, the tax liability was reduced to \$8,875.03. There was no adjustment made to purchases subject to use tax. Counsel for the Sales Tax Bureau stipulated that the reduction was correct.

5. At the hearing, applicant submitted two additional resale certificates received from Stan Linden Lithographers, Ltd. and B & B Enterprises. Said purchasers made purchases of \$2,023.00 during the test period June 1, 1972 to August 31, 1972, and of \$175.00 during the test period September 1, 1973 to November 30, 1973.

6. The Sales Tax Bureau failed to deduct a credit memorandum of \$200.00 when computing taxable sales for the month of November 1973, thereby overstating the taxable percentage for that test period.

7. Applicant submitted an individual listing of the purchases that comprised the totals posted to the asset accounts described in Finding of Fact "3". Applicant contended that actual purchase invoices were not available for periods dating back to 1967 and 1968. Applicant further contended that certain purchases represented charges for labor performed in connection with leasehold improvements and, therefore, were not subject to sales tax. Specific reference was made to the payments of \$200.00 per week to Marx Dreyfuss, the president of Septum Printing Corporation; however, said payments were charged to miscellaneous equipment rather than to leasehold improvements.

8. Counsel for the Sales Tax Bureau stipulated that applicant is entitled to an additional credit of \$88.92 for the period September 1, 1968 through February 28, 1969. Said credits were allowed on the original audit findings; however, they were erroneously deleted when recomputing the tax liability

pursuant to the pre-hearing conference.

CONCLUSIONS OF LAW

A. That the original assessment of \$16,966.65 is hereby reduced to \$8,786.11, as stipulated to by the Sales Tax Bureau (Findings of Fact "4" and "8").

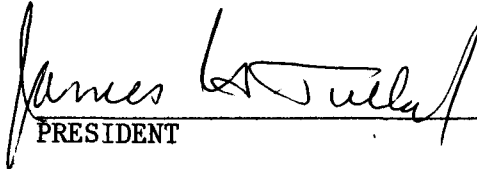
B. That the assessment which was issued was erroneous in that no consideration was given for the resale certificates received from Stan Linden Lithographers, Ltd. and B & B Enterprises, as outlined in Finding of Fact "5". The Sales Tax Bureau also failed to deduct a credit memorandum of \$200.00 as outlined in Finding of Fact "6". Accordingly, the taxable percentages for the test periods of June 1, 1972 through August 31, 1972 and September 1, 1973 through November 30, 1973 are hereby further reduced to 6.64% and 13.61%, respectively.


C. That the application of Septum Printing Corporation 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 Determination and Demand for Payment of Sales and Use Taxes Due issued on September 24, 1975; and that, except as so granted, the application is in all other respects denied.

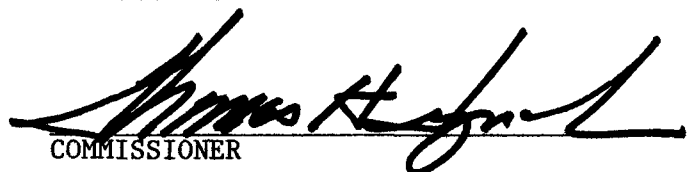
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER