

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Servco Leasing 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 6/1/74-8/31/74. :

State of New York
County of Albany

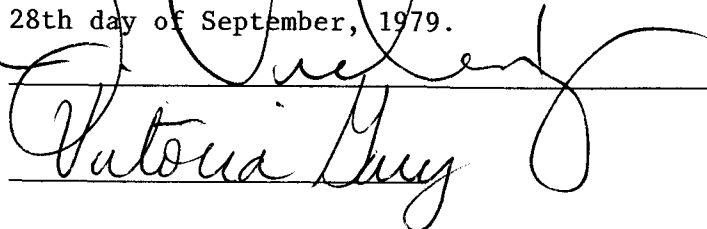
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Servco Leasing Corp., the petitioner in the within proceeding,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

Servco Leasing Corp.
750 3rd Ave.
New York, NY 10017

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 M. [unclear]

STATE OF NEW YORK
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of :
Servco Leasing Corp. :

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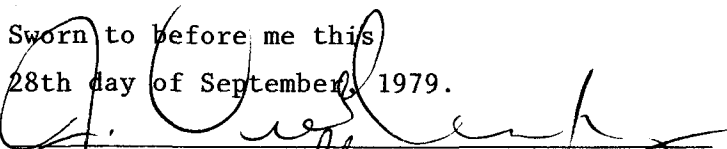
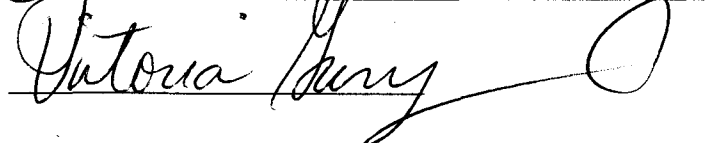
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Harold Rothberg the representative of the petitioner in the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

Mr. Harold Rothberg
Harold Rothberg & Co.
370 Lexington Ave.
New York, NY 10017

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.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Servco Leasing Corp.
750 3rd Ave.
New York, NY 10017

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
Harold Rothberg
Harold Rothberg & Co.
370 Lexington Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SERVCO LEASING CORP.	:	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 Ended August 31, 1974.	:	

Applicant, Servco Leasing Corporation, 750 3rd Avenue, New York, New York 10017, 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 ended August 31, 1974 (File No. 14905).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 10, 1978 at 1:15 P.M. Applicant appeared by Harold Rothberg, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether there is reasonable cause to abate the penalty assessed against applicant for the late filing of its sales tax return for the quarterly period ended August 31, 1974.

FINDINGS OF FACT

1. On January 20, 1975, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against applicant for \$3,049.38, which represents penalty and interest due on the late filing of applicant's sales tax return for the sales tax quarter ended August 31, 1974.

2. Applicant's check dated February 23, 1976, in payment of said Notice, was returned to the Sales Tax Bureau by applicant's bank marked "Stop Payment".

3. On March 19, 1976 as a result of the unpaid check, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against applicant for \$3,074.42.

4. Applicant contends that the penalty was unfairly and improperly assessed, since late filing of the return was not due to its negligence but due to circumstances beyond its control.

5. Applicant's bookkeeper walked out without Notice in May of 1974. The individual hired to assume the bookkeeping responsibilities had to reconstruct the records for the entire year, because the prior bookkeeper did not maintain an adequate set of records.

6. Applicant claimed that it experienced difficulties in obtaining the required tax forms.

7. Applicant also filed late New York state and local sales and use tax returns for the following periods:

<u>Period Ended</u>	<u>Due Date</u>	<u>Date Received</u>
May 30, 1974	June 20, 1974	September 17, 1974
February 28, 1974	March 20, 1974	July 5, 1974
November 30, 1973	December 20, 1973	January 4, 1974
August 31, 1973	September 20, 1973	November 26, 1973

CONCLUSIONS OF LAW

A. That under section 1145(a)(1) of the Tax Law, the Tax Commission may remit all or any part of the penalty imposed for the late filing of a return, if it is satisfied that the delay was excusable.

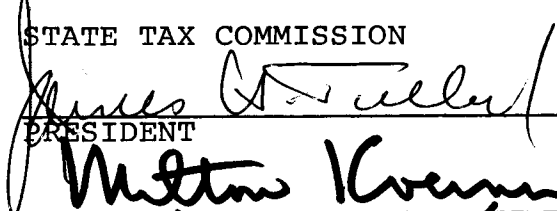
B. That in view of applicant's failure to file a timely sales tax return for the four quarterly periods immediately preceeding the period at issue, its failure to file a return for the quarter ended August 31, 1974 cannot be considered excusable.

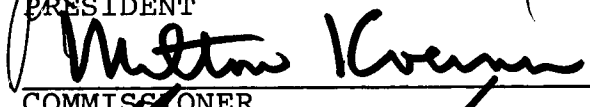
C. That the application of Servco Leasing Corporation is denied and the Notice and Demand for Payment of Sales and Use Taxes Due issued March 19, 1976 is sustained.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER