

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
900 G. C. Affiliates, 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 Period 9/1/72 - 8/31/74. :

State of New York
County of Albany

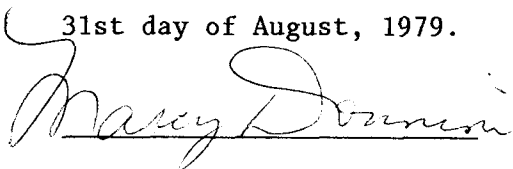
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Determination by mail upon 900 G. C. Affiliates, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

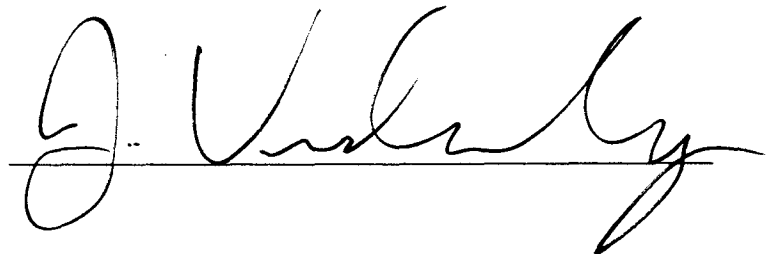
900 G. C. Affiliates, Inc.
666 Pelham Rd.
Mt. Vernon, NY 10805

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
31st day of August, 1979.


Mary Dominici


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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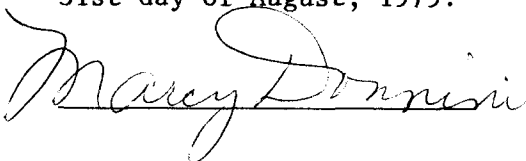
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Determination by mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

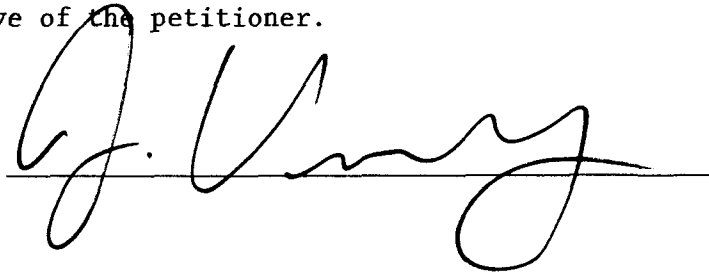
Sirs
Koch & Puterman & Greenberg
132 W. 31st St.
New York, NY 10001

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
31st day of August, 1979.


Mary Donnan


Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

900 G. C. Affiliates, Inc.
666 Pelham Rd.
Mt. Vernon, NY 10805

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,

A handwritten signature in cursive script, likely belonging to John J. Sollecito, the Director.

cc: Petitioner's Representative
Koch & Puterman & Greenberg
132 W. 31st St.
New York, NY 10001
Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 11, 1978 at 10:45 A.M.

Applicant appeared by Max Greenberg, CPA and Hyman Dan, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether applicant timely filed an application for revision of a determination.

FINDINGS OF FACT

1. On December 8, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against "900 Grand Concourse Affiliates, Inc.," for the period September 1, 1972 through August 31, 1974, in the amount of \$17,032.28, plus penalty and interest of \$8,694.98, for a total of \$25,727.26. Applicant's correct corporate name is "900 G.C. Affiliates, Inc."

2. The Sales Tax Bureau mailed said Notice to "900 Grand Concourse Avenue (sic), Bronx, New York 10451."

3. Applicant was doing business at 900 Grand Concourse Avenue, Bronx, New York, until May 29, 1974, when the City of New York appropriated the building through condemnation proceedings. At that time, applicant discontinued business activities; however, it continued to file New York state and local sales and use tax returns.

4. Applicant filed New York state and local sales and use tax returns for the quarters ending May 31, 1974 and August 31, 1974, indicating a change of address to 666 Pelham Road, New Rochelle, New York 10805.

The Sales Tax Bureau mailed subsequent returns to the corrected address.

5. On July 29, 1977, applicant's attorney, Emil Leepson, received a copy of the Notice dated December 8, 1976 from a tax compliance agent. Mr. Leepson immediately forwarded the Notice to

Joseph Caspi, President of 900 G.C. Affiliates, Inc.

6. Applicant filed an application for revision of the determination on October 11, 1977. Said application was not accepted by the Sales Tax Bureau, on the grounds that it was not filed within ninety days after the mailing of the Notice.

CONCLUSIONS OF LAW

A. That section 1147(a)(1) of the Tax Law states, in pertinent part, as follows:

Any notice authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this article or in any application made him pursuant to the provisions of this article....

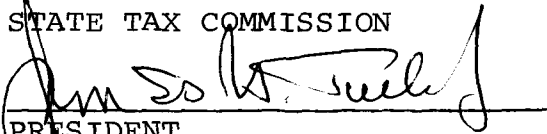
B. That the Sales Tax Bureau failed to mail the Notice to the address given in the last return filed by applicant; therefore, there can not be presumptive evidence of the receipt of said Notice, pursuant to section 1147(a)(1) of the Tax Law.

C. That the application of 900 G.C. Affiliates, Inc. for a hearing with respect to the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 8, 1976 is granted.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER