

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
All Borough Burglar Alarm Co., Inc. :
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 8/1/65-8/31/76. :

AFFIDAVIT OF MAILING

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 21st day of March, 1980, he served the within notice of Determination by mail upon All Borough Burglar Alarm Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

All Borough Burglar Alarm Co., Inc.
1614 Nostrand Ave.
Brooklyn, NY 11226

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
21st day of March, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
All Borough Burglar Alarm Co., Inc. :
for Redetermination of a Deficiency or a Revision :
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AFFIDAVIT OF MAILING

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 21st day of March, 1980, he served the within notice of Determination by mail upon Emanuel Chartash 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. Emanuel Chartash
6217 18th Ave.
Brooklyn, NY 11204

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
21st day of March, 1980.

Joanne Knapp

J. Vredenburg

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

March 21, 1980

All Borough Burglar Alarm Co., Inc.
1614 Nostrand Ave.
Brooklyn, NY 11226

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
Emanuel Chartash
6217 18th Ave.
Brooklyn, NY 11204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALL BOROUGH BURGLAR ALARM 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 Periods August 1,	:	
1965 through May 31, 1972 and September 1,	:	
1972 through August 31, 1976.	:	

Applicant, All Borough Burglar Alarm Co., Inc., 1614 Nostrand Avenue, Brooklyn, New York 11226, 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 periods August 1, 1965 through May 31, 1972 and September 1, 1972 through August 31, 1976 (File No. 17498).

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 May 24, 1979 at 10:45 A.M. Applicant appeared by Emanuel Chartash, CPA. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether applicant filed New York State and local sales and use tax returns for the period August 1, 1965 through May 31, 1972.

II. Whether the Audit Division properly determined additional sales taxes due from the applicant for the period September 1, 1972 through August 31, 1976.

FINDINGS OF FACT

1. On December 15, 1976, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, All Borough Burglar Alarm Co., Inc., for the period August 1, 1965 through May 31, 1972 and September 1, 1972 through August 31, 1976 in the amount of \$22,800.23 plus penalty and interest of \$18,575.90 for a total of \$41,376.13.

2. Applicant executed a consent extending to December 20, 1976, the period for the assessment of sales and use taxes with respect to the period September 1, 1972 through November 30, 1975.

3. On audit, the Audit Division found that the only sales records available were applicant's 1973 Federal income tax returns and sales tax returns for the period June 1, 1972 through August 31, 1976. From said records it was determined that gross sales reported on the 1973 Federal income tax return were 27.9 percent greater than sales reported on sales tax returns filed for the corresponding period. The audit also disclosed that applicant did not file sales tax returns for the periods ending November 30, 1974, February 28, 1975, August 31, 1975 and May 31, 1976. The Sales Tax Bureau estimated sales for said periods based on reported sales in the preceeding period.

The Sales Tax Bureau discovered that applicant's sales tax identification number was listed as inactive in its records and therefore requested that the applicant document that sales tax returns were filed for periods prior to June, 1972. Applicant was unable to produce such documentation thus the Sales Tax Bureau extended the audit period back to August 1, 1965. Applicant's

sales for the period August 1, 1965 through May 31, 1972 were estimated to be \$8,739.00 per quarter based upon average sales reported for the period June 1, 1972 through May 31, 1973.

In the absence of any other books and records, the Sales Tax Bureau increased reported and estimated sales 27.9 percent for the entire period at issue based on the deficiency found in the fiscal year ending September 30, 1973. This resulted in audited taxable sales of \$479,014.00 with tax computed thereon in the amount of \$30,153.65. The Sales Tax Bureau verified sales tax payments of \$7,353.42 for the period September 1, 1972 through August 31, 1976, thereby reducing the additional tax liability to \$22,800.23.

4. Subsequent to the audit, applicant produced cancelled checks dated March 19, 1969, June 16, 1969 and October 24, 1977 in the amounts of \$553.63, \$500.75 and \$497.83 which were for the payment of sales taxes for the periods ending February 28, 1969, May 31, 1969 and May 31, 1976, respectively.

5. Applicant submitted sufficient documentary evidence in the form of cancelled checks to prove that it filed and paid sales tax returns for the period August 1, 1965 through May 31, 1972.

CONCLUSIONS OF LAW

A. That applicant filed and paid sales tax returns for the period August 1, 1965 through May 31, 1972 thus the Sales Tax Bureau was barred from determining sales taxes due from the applicant for said period, in accordance with the provisions of section 1147(b) of the Tax Law, accordingly, the tax due for those periods is cancelled, and the notice is further reduced by \$497.83 to reflect applicant's sales tax payment for the period ending May 31, 1976.

B. That with respect to the periods September 1, 1972 through August 31, 1976, the Sales Tax Bureau properly determined the amount of sales tax due based on the applicants available records and that such determination was made within the meaning and intent of section 1138(a) of the Tax Law.

C. That the application of All Borough Burglar Alarm Co., Inc. is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 15, 1976, and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York

MAR 21 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER