

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Peter J. Buhite :

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 8/1/65 - 8/31/67. :

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 2nd day of January, 1980, he served the within notice of Determination by mail upon Peter J. Buhite, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter J. Buhite
c/o Culley, Marks, Corbett & Tanenbaum
Rochester, NY

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
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
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for Redetermination of a Deficiency or a Revision :
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for the Period 8/1/65 - 8/31/67. :

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 2nd day of January, 1980, he served the within notice of Determination by mail upon William Von Dohlen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

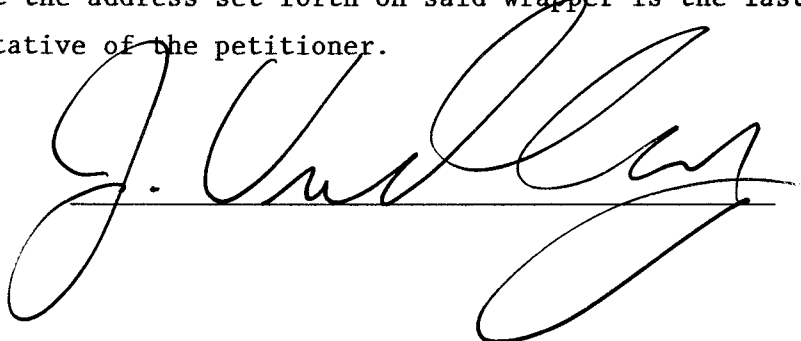
Mr. William Von Dohlen
Culley, Marks, Corbett & Tanenbaum
500 Executive Ofc. Bldg.
Rochester, NY

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
2nd day of January, 1980.

Joanne Knapp

A large, stylized handwritten signature, likely of the affiant Jay Vredenburg, written over a horizontal line.

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

January 2, 1980

Peter J. Buhite
c/o Culley, Marks, Corbett & Tanenbaum
500 Executive Ofc. Bldg.
Rochester, NY

Dear Mr. Buhite:

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
William Von Dohlen
Culley, Marks, Corbett & Tanenbaum
500 Executive Ofc. Bldg.
Rochester, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
PETER J. BUHITE	:	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 August 1, 1965 through August 31,	:	
1967.	:	

Applicant, Peter J. Buhite, c/o Culley, Marks, Corbett & Tanenbaum, 500 Executive Office Building, Rochester, New York, 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 August 1, 1965 through August 31, 1967 (File No. 01933).

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 115 Main Street, East Rochester, New York, on November 9, 1971 and was continued November 11, 1971. Applicant appeared by Culley, Marks, Corbett & Tanenbaum (William F. Von Dohlen, Esq., of counsel). The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

I. Whether applicant, Peter J. Buhite, is a person "responsible" for collection of the sales tax for Boyce and Allan Heating Sales, Inc. for the period August 1, 1965 through August 31, 1967, within the meaning and intent of section 1133 of the Tax Law.

FINDINGS OF FACT

1. By a Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated November 13, 1969, applicant was assessed \$32,446.30 for taxes, penalty and interest. It was the position of the Sales Tax Bureau that applicant, as an officer of Boyce and Allan Heating Sales, Inc., was personally liable for taxes owed by the subject corporation and was under a duty to act for the corporation in complying with the requirements of Articles 28 and 29 of the Tax Law.

2. Applicant, Peter J. Buhite, was the secretary for Boyce and Allan Heating Sales, Inc. during all but the final nine days of the period herein at issue. It was applicant's responsibility as the secretary of the corporation to take the minutes of formal meetings of the corporation's officers. Applicant had no other responsibilities as the secretary of the corporation. He was not authorized to sign checks, could not authorize the payment of bills, did not prepare or execute tax returns, etc. Applicant's other responsibilities with the corporation were those of a salesman, i.e. the sale of heating and air conditioning equipment. It was not part of applicant's normal duties to collect the purchase price of equipment he sold. It was the position of applicant, Peter J. Buhite, that he was not such an officer as is made personally liable for the tax of a corporation under sections 1131 of the Tax Law.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides, in part, that every person required to collect any tax imposed by this article shall be personally liable for the tax imposed.

B. That section 1131(1) of the Tax Law defines "Persons required to collect tax" to include any officer or employee of a corporation, who as such officer is under a duty to act for such corporation in complying with any requirement of this article.

C. That applicant, Peter J. Buhite, was not an officer responsible for tax pursuant to section 1131(1) or 1133(a) of the Tax Law.

D. That the application of Peter J. Buhite is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 13, 1969 is cancelled.

DATED: Albany, New York

JAN 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER