

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Clarendon Laboratory & Surgical Supply Co., 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 & 29 of the Tax Law
for the Period 3/1/72 - 2/28/75. :

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 7th day of July, 1980, he served the within notice of Determination by mail upon Clarendon Laboratory & Surgical Supply Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clarendon Laboratory & Surgical Supply Co., Inc.
1127 Flatbush 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
7th day of July, 1980.

Eubank A Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Clarendon Laboratory & Surgical Supply Co., Inc.

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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 7th day of July, 1980, he served the within notice of Determination by mail upon Howard H. Cohen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

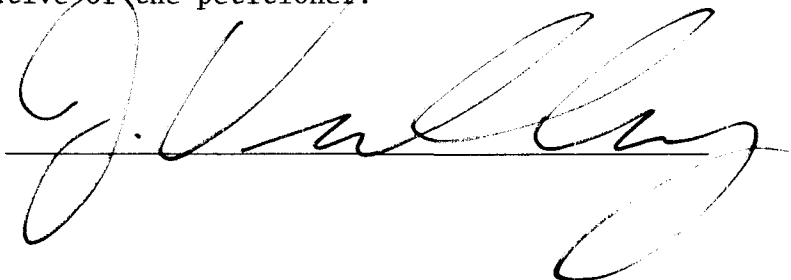
Mr. Howard H. Cohen
507 5th Ave.
New York, NY

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
7th day of July, 1980.

Ester A. Bank



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

July 7, 1980

Clarendon Laboratory & Surgical Supply Co., Inc.
1127 Flatbush 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
Howard H. Cohen
507 5th Ave.
New York, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| CLARENDON LABORATORY | : | |
| & SURGICAL SUPPLY 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 | : | |
| Period March 1, 1972 through February 28, | : | |
| 1975. | : | |

Applicant, Clarendon Laboratory & Surgical Supply Co., Inc., 1127 Flatbush 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 period March 1, 1972 through February 28, 1975 (File No. 16036).

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 February 6, 1979 at 2:45 P.M. Applicant appeared by Howard H. Cohen, CPA. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the Audit Division's determination of additional sales and use taxes due for the period March 1, 1972 through February 28, 1975 was correct.

FINDINGS OF FACT

1. Applicant, Clarendon Laboratory & Surgical Supply Co., Inc., operated a wholesale and retail surgical supplies and laboratory services business at 1127 Flatbush Avenue, Brooklyn, New York.

2. On June 21, 1976, as the result of a field audit, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued against the applicant for the period March 1, 1972 through February 28, 1975. The Notice was issued for \$22,413.52, plus penalty and interest of \$10,139.45, for a total of \$32,552.97.

3. The audit performed by the Audit Division, using the month of October 1974 as a test period, produced the following:

- a. No tax was paid on the purchase of laboratory supply items.

Applicant was assessed on the total purchases for the Laboratory Supply account (#5050) for the audit period, resulting in taxable supply items of \$241,043.00.

- b. An expense purchases test revealed that the applicant failed to pay tax on purchases of \$838.55 resulting in an error rate of .086 percent. This rate was applied to the expense purchases for the audit period, resulting in taxable expense purchases of \$33,808.00.

- c. A test of the nontaxable sales revealed that the applicant had additional taxable sales of \$415.39 resulting in an error rate of .0426483 percent, which was applied to nontaxable sales for the audit period, resulting in additional taxable sales of \$16,766.00.

4. The Audit Division examined fixed assets for the entire audit period and determined that tax had not been paid on purchases totaling \$35,131.00.

5. Upon reviewing the general ledger, the Audit Division determined that purchases for resale for the audit period were \$21,234.00 greater than the purchases shown in the cost-of-goods sold section of applicant's Federal tax returns. The additional purchases were determined to be consumed by the

applicant in the course of their laboratory business and, therefore, subject to tax.

6. That the applicant had sufficient records available for the Audit Division to determine the exact amount of the applicant's sales and use tax liability.

7. Applicant contended that the additional purchases of \$21,234.00 were used in accommodation sales to other surgical supply companies.

8. Applicant did not present any documentary evidence to support its contentions.

CONCLUSIONS OF LAW

A. That the Audit Division, in some phases of its audit, did determine the exact amount of the applicant's tax liability. That the tax determined to be due on purchases charged to the Laboratory Supply Account (#5050), on purchases of fixed assets and the tax due on purchases of \$21,234.00 reflects the exact amount of applicant's tax liability.

B. That the Audit Division failed to determine the exact amount of applicant's sales and use tax liability by using a one month test of non-taxable sales and expense purchases which resulted in error rates of .0426483 and .086, respectively. That tax shall be due on expense purchases of \$838.55 for only the test month of October 1974 and that the balance of the expense purchases (\$32,969.45) resulting from the one month test is cancelled. That tax shall be on taxable sales of \$415.39 for only the test month of October, 1974 and that the balance of additional taxable sales (\$16,350.61) determined from the one month test is cancelled.

C. That with the exception as noted in Conclusion of Law "B", the examination of the applicant's books and records by the Audit Division was properly conducted within the meaning and intent of section 1138(a) of the Tax Law.

D. That the application of Clarendon Laboratory and Surgical Supply Co., Inc. is granted to the extent of Conclusion of Law "B"; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

JUL 07 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER