

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Barger Crusade :
Central State Decorators Supply Co. : 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 3/1/71-8/31/71. :

State of New York
County of Albany

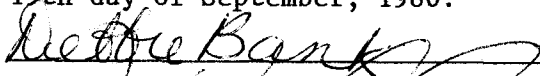

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by mail upon Barger Crusade, Central State Decorators Supply Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barger Crusade
Central State Decorators Supply Co.
Oakhill Park
Elmira, NY 14905

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
19th day of September, 1980.

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
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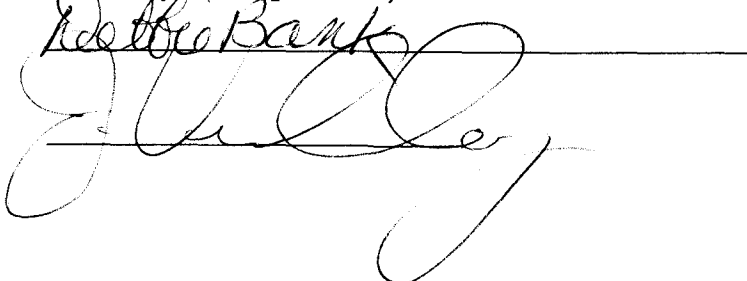
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by mail upon George T. Mahshie the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. George T. Mahshie
Presidential Plaza, 550 E. Genesee St.
Syracuse, NY 13202

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
19th day of September, 1980.



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

September 19, 1980

Barger Crusade
Central State Decorators Supply Co.
Oakhill Park
Elmira, NY 14905

Gentlemen:

Please take notice of the Decision 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
George T. Mahshie
Presidential Plaza, 550 E. Genesee St.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BARGER CRUSADE	:	DECISION
	:	
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, 1971 through August 31,	:	
1971.	:	

Petitioner, Barger Crusade, Oakhill Park, Elmira, New York 14905, filed a petition 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, 1971 through August 31, 1971 (File No. 14166).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on May 16, 1980 at 9:15 A.M. Petitioner appeared by George T. Mahshie, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner is personally liable for sales taxes due from Central State Decorators Supply, Inc. for the period March 1, 1971 through August 31, 1971.

II. Whether the amount of sales taxes due determined for the period June 1, 1971 through August 31, 1971, is correct.

FINDINGS OF FACT

1. Central State Decorators Supply, Inc. was engaged in the sale of paint, wallpaper and decorator's supplies. Petitioner, Barger Crusade, together with Raymond Shaheen, formed Central State Decorators Supply, Inc. in May,

1968, each of which owned 50 percent of the outstanding stock. Petitioner held the office of secretary-treasurer. In February, 1970, Robert Parker invested in the corporation and was named president.

2. On February 2, 1972, Central State Decorators Supply, Inc. filed a petition in bankruptcy with the United States District Court, Northern District of New York.

3. On May 21, 1973, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period March 1, 1971 through January 3, 1972 for taxes due of \$2,875.62, plus interest of \$281.95, for a total of \$3,157.57. The liability was predicated on petitioner being an officer of Central State Decorators Supply, Inc. The amount of tax due was based on an unpaid return for \$775.62 filed for the period ending May 31, 1971 and estimated tax of \$2,100.00 for returns not filed for periods thereafter.

4. On April 8, 1976, the Audit Division issued a Notice of Assessment Review which revised the tax due to \$1,438.64, plus interest of \$179.20, for a total of \$1,617.84. Said revision was based on a letter from the bankruptcy trustee which stated in part:

"In reviewing the sales journal, I find the only sales postings for the period beyond May 31, 1971 to be \$5,960.56 for the month of June, 1971, with nothing beyond that time. I do not know whether this was because they had no sales or because there were no postings of sales. In any event, the company was heading downhill. Since there were no employees after August 20, 1971, if we assume monthly sales of \$6,000.00, there would be tax owing on 2 2/3 months making sales for that period of \$16,000.00."

The revision also reflected a dividend payment of \$296.98 from the bankruptcy distribution.

5. The unpaid sales tax return filed for the period March 1, 1971 through May 31, 1971 was signed by Robert Parker, as president.

6. Robert Parker hired Michael Seikaly as the bookkeeper for the corporation in June, 1970. Mr. Seikaly's duties included maintaining the books and records and preparing tax returns. Mr. Seikaly testified that for the duration of his employment Robert Parker signed all checks, deposited the business receipts, paid the bills and was the sole party responsible for the day-to-day financial affairs and management of the corporation.

7. Petitioner resigned his office of secretary-treasurer in September, 1970. During the period at issue, petitioner was a shareholder of the corporation but was not involved in the operation and management of the corporation.

CONCLUSIONS OF LAW

A. That section 1131(1) of the Tax Law provides:

"'Persons required to collect tax' or 'persons required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services; ...Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."

B. That section 1133(a) of the Tax Law provides that "...every person required to collect any tax imposed...shall be personally liable for the tax imposed, collected or required to be collected..."

C. That petitioner, Barger Crusade, was not a "person required to collect tax" for the period at issue within the meaning and intent of section 1131(1) of the Tax Law; therefore, he is not personally liable for the tax under section 1133(a) of the Tax Law. Vogel v. New York State Dept. of Taxation and Finance, 98 Misc.2d 222.

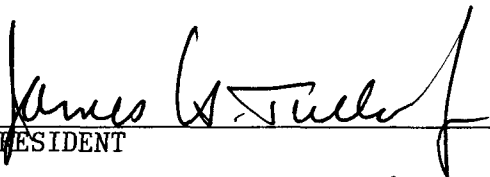
D. That since petitioner is not liable for the tax, the issue regarding the correctness of the tax determined for the period ending August 31, 1971 is moot.

E. That the petition of Barger Crusade is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 21, 1973 as amended by the Notice of Assessment Review dated April 8, 1976 is cancelled.

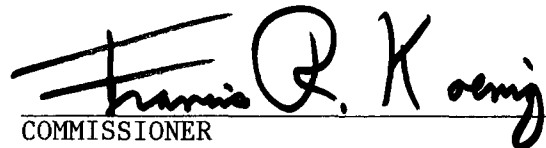
DATED: Albany, New York

STATE TAX COMMISSION

SEP 19 1980


PRESIDENT


COMMISSIONER


COMMISSIONER