

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
En-Toto Beautiques of Manhasset, 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 6/1/72-8/31/75. :

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 22nd day of February, 1980, he served the within notice of Determination by mail upon En-Toto Beautiques of Manhasset, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

En-Toto Beautiques of Manhasset, Inc.
38-15 Bell Blvd.
Bayside, NY 11361

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
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
En-Toto Beautiques of Manhasset, Inc. :
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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 22nd day of February, 1980, he served the within notice of Determination by mail upon Bernard Zeligson 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. Bernard Zeligson
381 Sunrise Highway
Lynbrook, 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
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

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

February 22, 1980

En-Toto Beautiques of Manhasset, Inc.
38-15 Bell Blvd.
Bayside, NY 11361

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
Bernard Zeligson
381 Sunrise Highway
Lynbrook, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
EN-TOTO BEAUTIQUES OF MANHASSET, 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 June 1, 1972 through August 31,	:	
1975.	:	

Applicant, En-Toto Beautiques of Manhasset, Inc., 35-15 Bell Blvd., Bayside, New York 11361, 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 June 1, 1972 through August 31, 1975 (File No. 14804).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 12, 1978 at 10:45 A.M. Applicant appeared by Bernard Zeligson, CPA. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether in computing the sales and use tax due from applicant, the Audit Division correctly disallowed out-of-state sales and sales for resale.

FINDINGS OF FACT

1. Applicant, En-Toto Beautiques of Manhasset, Inc., timely filed New York State and local sales and use tax returns for the period June 1, 1972 through August 31, 1975.

On August 21, 1975, applicant consented to extending the period of

limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law for the taxable periods June 1, 1972 through August 31, 1975 to June 20, 1976.

2. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued to applicant on April 5, 1976. Said notice was for \$48,950.39 in sales tax, plus \$18,861.17 in penalties and interest, for a total of \$67,811.56.

3. After examining sales invoices and shipping documents, the auditor attempted to verify such records by mailing letters to selected customers of applicant to determine whether such purchases were made for resale or, in the case of out-of-state sales, if such sales were delivered outside of New York State. Responses indicated applicant's records were both inaccurate and incomplete.

Additionally, the auditor contacted United Parcel Service ("UPS") to verify applicant's contention their out-of-state sales were delivered by UPS to such customers outside of New York State. UPS's records indicated the shipping documents supplied by applicant to the auditor did not reflect actual shipments made by UPS.

4. The month of June, 1975, was selected as the test period by the auditor. For this month, applicant claimed a deduction of \$25,328.00 from gross sales for out-of-state sales and sales for resale. Verification of sales for resale was made by sending letters to selected customers of applicant. Responses revealed that \$854.00 of the deduction for sales for resale was improperly taken. The auditor also reviewed the month's sales invoices and shipping documents to verify out-of-state sales. Out-of-state sales of \$15,726.00 were unsubstantiated. The auditor determined that of the total

deductions taken in the amount of \$25,328.00, 65 percent or \$16,580.00 should be disallowed.

5. At the hearing, applicant submitted documentation that the following sales made during the test period and disallowed by the auditor, were, in fact, sales made for resale or out-of-state sales:

<u>Customer</u>	<u>Amount</u>
Amourluse Couture, Inc.	\$ 600.00
Sharoff	321.50
Grossman	126.50
Wolf	296.50
Abramowitz	156.50
Feldman	807.50
Bellino	718.95
Dubin	211.50
Kalter	210.00
Galson	170.00
Mermelstein	450.00
Ancona	439.50
Yedid	378.50
Total	<u>\$4,886.95</u>

By taking the above figures into consideration, the ratio of disallowed deductions would be reduced from 65 percent to 46 percent.

CONCLUSIONS OF LAW

A. That the assessment issued by the Audit Division was erroneous in that due consideration was not given for those sales which were made for resale and for out-of-state deliveries as per Finding of Fact "5".

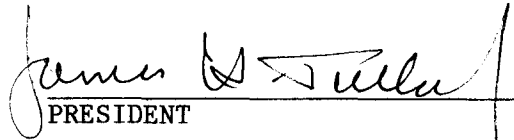
B. That the ratio of disallowed deductions is reduced from 65 percent to 46 percent as outlined in Finding of Fact "5".

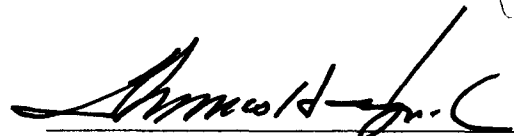
C. That the application of En-Toto Beautiques of Manhasset, Inc. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify accordingly the Notice of Determination

and Demand for Payment of Sales and Use Taxes Due issued on April 5, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER