

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Friedman & Haas, 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 3/1/73-11/30/76. :

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 20th day of June, 1980, he served the within notice of Determination by mail upon Friedman & Haas, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Friedman & Haas, Inc.
2008 New York Ave.
Huntington Station, NY 11746

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
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Friedman & Haas, 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 3/1/73-11/30/76. :

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 20th day of June, 1980, he served the within notice of Determination by mail upon Louis Kanter 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. Louis Kanter
148 E. Main St.
Huntington, NY 11743

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
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 20, 1980

Friedman & Haas, Inc.
2008 New York Ave.
Huntington Station, NY 11746

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
Louis Kanter
148 E. Main St.
Huntington, NY 11743
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
FRIEDMAN AND HAAS, 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, 1973 through November 30,	:	
1976.	:	

Applicant, Friedman and Haas, Inc., 2008 New York Avenue, Huntington Station, New York 11746, 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, 1973 through November 30, 1976 (File No. 18995).

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 November 1, 1979 at 2:45 P.M. Applicant appeared by Louis Kanter, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from applicant for the period March 1, 1973 through November 30, 1976.

FINDINGS OF FACT

1. On May 9, 1977, 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 applicant, Friedman and Haas, Inc. for the period March 1, 1973 through November 30, 1976 for taxes due of \$16,450.82 plus penalty and interest of \$7,224.11 for a total of \$23,674.93.

2. Applicant executed a consent extending the time within which to issue an assessment of sales and use taxes for the period March 1, 1973 through February 29, 1976, to June 20, 1977.

3. During the period in issue, applicant operated a retail furniture business at 2008 New York Avenue, Huntington Station, New York.

4. On audit, the Audit Division determined that gross sales of \$411,000.00 reported on applicant's U.S. Corporation income tax returns for the years 1973, 1974 and 1975 exceeded the gross sales of \$234,704.00 reported on applicant's sales tax returns for the same period, which resulted in an underreporting factor of 75.1 percent. Therefore, the Audit Division increased applicant's gross sales reported on its sales tax returns for the audit period by 75.1 percent to reflect the above discrepancy. This resulted in additional taxable sales of \$235,012.00 and tax due thereon of \$16,450.82.

5. The books and records maintained by applicant were inadequate and, by applicant's admission, its sales tax liabilities could not be determined with any precision.

6. Applicant offered no substantial evidence to show that the Audit Division's determination was incorrect.

7. Applicant argued that the penalties and interest imposed by the Audit Division should be waived.

CONCLUSIONS OF LAW

A. That the Audit Division properly determined the amount of tax due from such information as was available, within the meaning and intent of section 1138(a) of the Tax Law.

B. That applicant, Friedman and Haas, Inc., failed to sustain the burden of proving that the additional receipts computed by the Audit Division were not taxable in accordance with the meaning and intent of section 1132(c) of

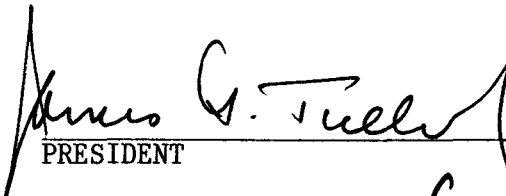
the Tax Law.

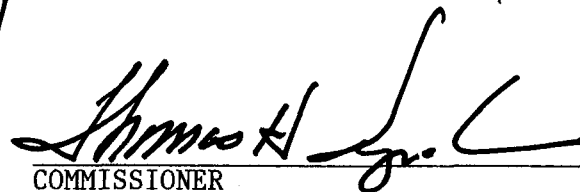
C. That the application of Friedman and Haas, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 9, 1977 is sustained.

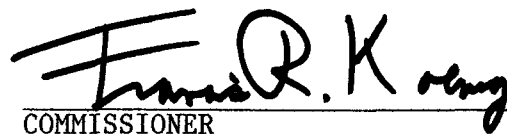
DATED: Albany, New York

STATE TAX COMMISSION

JUN 20 1980


PRESIDENT


COMMISSIONER


COMMISSIONER