

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
H. & S. Tool & Mold Corp. :

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 12/1/74 - 11/30/75. :

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 17th day of October, 1980, he served the within notice of Decision by mail upon H. & S. Tool & Mold Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

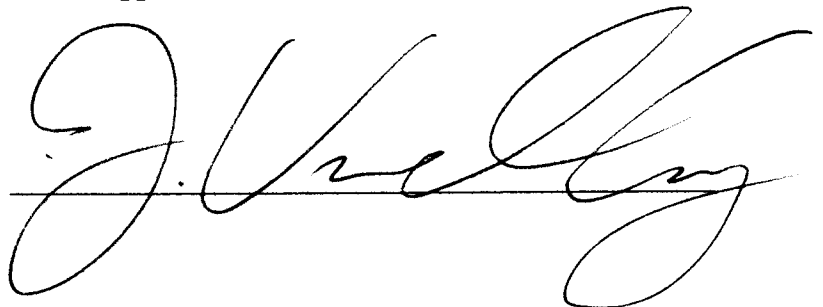
H. & S. Tool & Mold Corp.  
473 Wortman Ave.  
Brooklyn, NY 12208

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  
17th day of October, 1980.

  
Notary Public



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
H. & S. Tool & Mold Corp. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
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AFFIDAVIT OF MAILING

State of New York  
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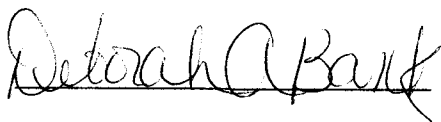
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by mail upon Melvin I. Feit the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

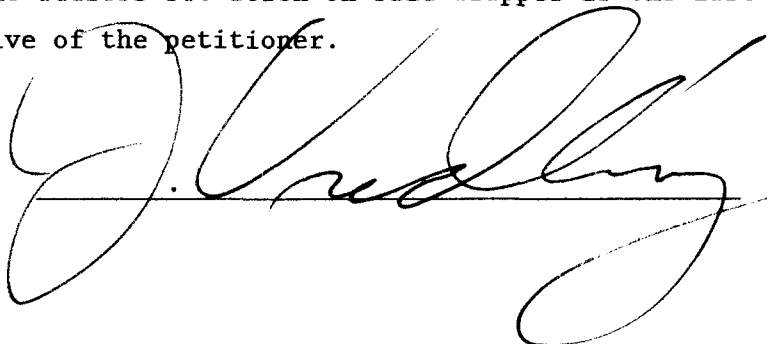
Mr. Melvin I. Feit  
Elmer, Fox, Westheimer & Co.  
1211 Ave. of the Americas  
New York, NY 10036

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  
17th day of October, 1980.





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

October 17, 1980

H. & S. Tool & Mold Corp.  
473 Wortman Ave.  
Brooklyn, NY 12208

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  
Melvin I. Feit  
Elmer, Fox, Westheimer & Co.  
1211 Ave. of the Americas  
New York, NY 10036  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
H & S TOOL & MOLD CORPORATION	:	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 December 1, 1974 through	:	
November 30, 1975.	:	

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Petitioner, H & S Tool & Mold Corporation, 473 Wortman Avenue, Brooklyn, New York 12208, 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 December 1, 1974 through November 30, 1975 (File No. 17443).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 28, 1979 at 10:45 A.M. Petitioner appeared by Melvin I. Feit, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether penalties and interest assessed in excess of the minimum statutory rate should be canceled.

FINDINGS OF FACT

1. On September 20, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against H & S Tool & Mold Corporation for the period December 1, 1974 through November 30, 1975. The Notice was issued in the amount of \$3,824.36 tax, plus penalties and interest of \$1,256.49, for a total of \$5,080.85.

2. The Audit Division based its determination of tax due on petitioner's self-analysis of sales made of tools and molds on which no sales tax was charged and purchases of items on which tax was not paid.

3. At the hearing, petitioner agreed to the tax assessed. It requested that the penalties be abated since the failure to collect or pay the tax was not willful; but merely a misunderstanding of the Tax Law as it relates to manufacturers.

4. Petitioner has corrected his billing procedures and has since properly collected the tax.

5. The petitioner acted in good faith.

CONCLUSIONS OF LAW

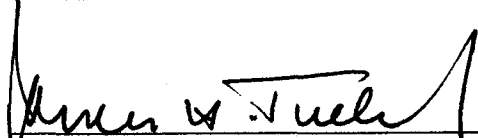
A. That the delay in payment of sales tax was due to a misunderstanding of the taxability of certain manufacturing items and there was no willful intent to disobey the taxing statutes; therefore, the penalties and interest in excess of the minimum statutory rate are canceled.


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 September 20, 1976; and that except as so granted, the petition of H & S Tool & Mold Corporation is in all other respects denied.

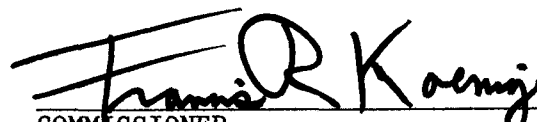
DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER