STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
C. H. Heist Corporation :

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 3/2/71. :

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 31st day of October, 1980, he served the within notice of Decision by mail upon C. H. Heist Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

C. H. Heist Corporation
Anderson Rd.
Buffalo, NY 14225

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
31st day of October, 1980.

Deborah A Bank

J. Vredenburg

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

October 31, 1980

C. H. Heist Corporation
Anderson Rd.
Buffalo, NY 14225

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
C. H. HEIST 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 March 2, 1971.	:	

Petitioner, C. H. Heist Corporation, Anderson Road, Buffalo, New York 14225, 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 2, 1971 (File No. 01926).

A formal hearing was scheduled to be held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on July 11, 1977 at 2:45 P.M. Prior to the commencement of the hearing, petitioner requested that the matter be submitted to the State Tax Commission for a decision based on the material contained in the Audit Division file.

ISSUE

Whether the purchase of an airplane by petitioner is subject to sales or use tax.

FINDINGS OF FACT

1. On March 2, 1971, petitioner C. H. Heist Corporation purchased an airplane - namely, a 1968 Mitsubishi M U 2.

2. Petitioner did not file a "Report of Casual Sale" regarding its purchase of an airplane on March 2, 1971.

3. Petitioner used said airplane in the course of and incident to its business, which involved work and/or offices in New York State, at least nine (9) other states, Canada and Puerto Rico.

4. Petitioner maintained its administrative and operating offices in New York State and performed income-producing services for its customers in New York State.

5. Petitioner used said airplane on numerous trips during 1971. Petitioner's flight log revealed that the most substantial portion of the trips were out of and returning to Buffalo, New York; i.e., in excess of 125 trips originating from and returning to Buffalo within one day and on rare instances, two days.

6. During 1971 alone, the plane made 14 intrastate trips in New York State, according to petitioner's flight log.

7. During most of 1972, said airplane was predominately used for trips to and from Buffalo, New York to various other locations.

8. On March 17, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due demanding taxes of $16,800.00, and interest and penalties of $5,712.00, for a total of $22,512.00.

9. On March 25, 1975, petitioner requested a hearing on said notice of determination and demand.

10. Petitioner, at all times, acted in reliance upon the advice of its accountants and attorneys.

CONCLUSIONS OF LAW

A. That petitioner failed to sustain its burden of proof that said airplane was not regularly based in New York State.

B. That petitioner is liable for sales and use taxes in the amount of $16,800.00, as assessed in the notice of determination and demand bearing Number 90,719,493 plus interest.

C. That petitioner is not liable for any penalties or interest in excess of the minimum statutory rate, since all actions were based upon the advice of its accountants and attorneys.

D. That the petition of C. H. Heist Corporation dated March 25, 1975 relating to the notice of determination dated March 17, 1975 is denied except as modified in Conclusion of Law "C", above, and the notice of determination and demand, as so modified, is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York

OCT 31 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

OCT 31 1980