

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
A. I. Kissam Racing Stable :  
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 1967 - 1969. :

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 6th day of August, 1980, he served the within notice of Determination by mail upon A. I. Kissam Racing Stable, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

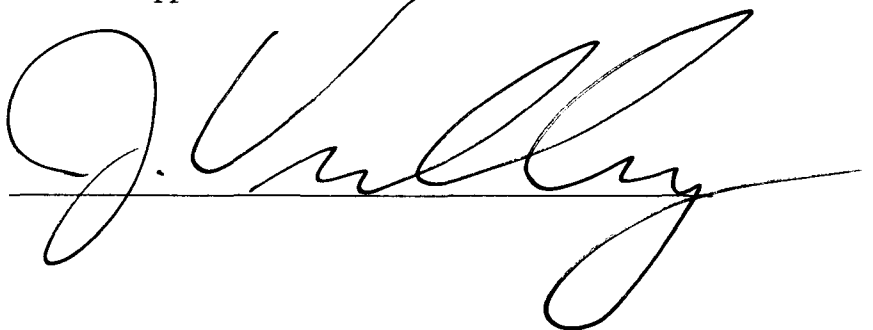
A. I. Kissam Racing Stable  
120 Broadway  
New York, NY 10005

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  
6th day of August, 1980.

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STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
A. I. Kissam Racing Stable :  
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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 6th day of August, 1980, he served the within notice of Determination by mail upon Anthony S. Genovese the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

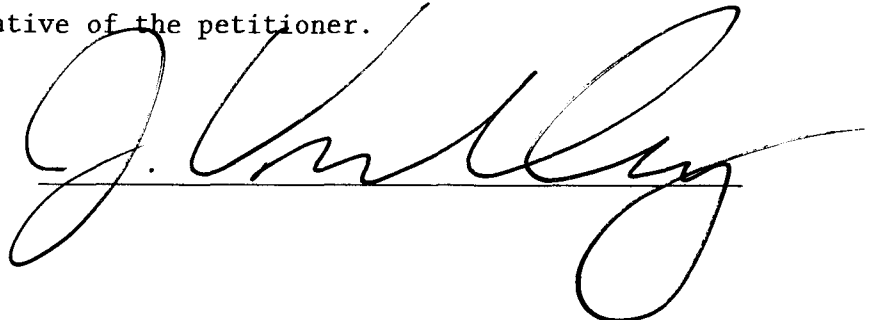
Mr. Anthony S. Genovese  
Kissam, Halpin & Genovese  
120 Broadway  
New York, NY 10005

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  
6th day of August, 1980.

Notaral Bank



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

August 6, 1980

A. I. Kissam Racing Stable  
120 Broadway  
New York, NY 10005

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  
Anthony S. Genovese  
Kissam, Halpin & Genovese  
120 Broadway  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
A. I. KISSAM RACING STABLE	:	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 Periods 1967, 1968 and 1969.	:	

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Applicant, A. I. Kissam Racing Stable, 120 Broadway, New York, New York 10005, 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 periods 1967, 1968 and 1969 (File No. 10009).

Applicant, in a stipulation entered into by its representative, Anthony S. Genovese, Esq., and the Law Bureau of the Department of Taxation and Finance representing the Audit Division dated July 18, 1978, waived a formal hearing and requested that this matter be submitted to the State Tax Commission for a decision.

Based on the stipulation and the record, as presently constituted, the State Tax Commission renders the following decision.

ISSUES

I. Whether the type of race in which a horse is entered is indicative of the value the owner placed on that horse at the time the horse was first raced in New York.

II. Whether the market value of a race horse is determined by the odds of the horse and the horse's poor performance.

III. Whether the Sales Tax Bureau properly denied applicant's claim for refund.

FINDINGS OF FACT

1. Applicant, A. I. Kissam Racing Stable, filed an individual "Report of Casual Sales" for the following horses: Kentucky Folk, Ganselle, Burdoff and On Dancer, respectively, March 18, 1968, April 1, 1970, May 15, 1969 and April 1, 1970.

2. On October 8, 1970, applicant filed an application for refund of sales and use taxes for \$6,085.00 based on an alleged overpayment of sales and use taxes paid for the periods 1967 through 1969 on the purchase price of the following horses: Fanette, Royal Jest, Metairie Dominie, Metairie Abbe, Xandra, Kentucky Folk, Ganselle, Burdoff and On Dancer.

3. Applicant's application for refund was denied in full. Applicant timely filed an application for a hearing to review the determination of the Sales Tax Bureau.

4. Applicant withdrew all refund claims previously filed with respect to the following horses: Metairie Abbe, Royal Jest, Metairie Dominie, Xandra and Fanette.

5. The horse Ganselle was purchased in Kentucky in February, 1968 for \$10,000.00 and was first raced in New York on March 16, 1970 for a claiming price of \$7,500.00. The value of the horse as of its first use in New York State was \$7,500.00, as stipulated and agreed by the parties hereto.

6. The horse, Kentucky Folk, was purchased in Kentucky in September, 1966 for \$20,500.00 and first raced in New York in a maiden race on March 30, 1968, finishing 9th at odds of 77 to 1. On April 12, 1968, the horse raced in a claiming race for a price of \$10,000.00, finishing 8th at odds of 87 to 1. On May 3, 1968, the horse raced in a claiming race for \$7,500.00, finishing 2nd at odds of 28 to 1. Applicant contends that in view of the type of race the

horse was entered, the odds of the horse and the horse's poor performance, the value of the horse at the time it first entered New York State was \$7,500.00. The Audit Division contends that the value should be the original cost of \$20,500.00.

7. Burdoff was purchased in Florida in January, 1968 for \$21,000.00 and first raced in New York on October 31, 1968 in a maiden race and finished 13th at odds of 11 to 1. The horse next raced on November 28, 1968 in a maiden race finishing 11th as part of the field, at odds of 29 to 1. Burdoff next raced in 1969 in a maiden race finishing 5th at odds of 34 to 1. Applicant contends that in view of the type of race the horse was entered, the odds of the horse and the horse's poor performance, the value should be \$10,000.00. The Audit Division claims the value should be the original cost of \$21,000.00.

8. The horse, On Dancer, was purchased in Kentucky for \$30,000.00 in September, 1968 and first raced in New York in a maiden race on March 24, 1970 finishing 7th at odds of 38 to 1. This horse raced again on April 3, 1970 finishing 7th at odds of 33 to 1 and subsequently raced on April 13, 1970 finishing 7th at odds of 70 to 1. Applicant contends that in view of the type of race the horse was entered, the odds of the horse and the horse's poor performance, the value of this horse should be \$6,500.00. The Audit Division contends that the fair market value of On Dancer at the time it entered New York State was \$30,000.00, On Dancer's original cost.

9. Each of the aforementioned horses was used outside the State for more than six months prior to the horse's use within this State.

#### CONCLUSIONS OF LAW

A. That section 1111(b)(1) of the Tax Law provides:

"b) Tangible personal property which has been purchased by a resident of New York state outside of this state for use outside of

this state and subsequently becomes subject to the compensating use tax imposed under this article, shall be taxed on the basis of the purchase price of such property, provided, however:

(1) That where a taxpayer affirmatively shows that the property was used outside such state by him for more than six months prior to its use within this state, such property shall be taxed on the basis of current market value of the property at the time of its first use within this state. The value of such property, for compensating use tax purposes, may not exceed its cost."

B. That the current market value of a race horse may be established by any number of factors, one of which is the type of race in which the horse is entered. However, the odds of a horse in a particular race and/or the performance of a horse in a particular race are useful only in comparison with the odds and performance of the other horses in the same race and are not to be used as the sole criteria in determining the market value of the horse.

C. That the current market value of the horse Ganselle as of its first use in New York State is \$7,500.00, as stipulated and agreed by the parties hereto.

D. That the current market value of the horse Kentucky Folk as of its first use in New York State is \$7,500.00, the claiming price.

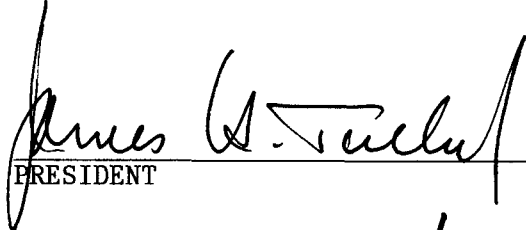
E. That by making use of odds and performance as sole criteria, the applicant has failed to sustain the burden of proof required to show that an amount other than original cost should be used as the current market value of the horses Burdoff and On Dancer as of their first use in New York State.


F. That the application of A. I. Kissam Racing Stable is granted to the extent indicated in Conclusions of Law "C" and "D" above; that the Audit Division is hereby directed to refund \$775.00, plus interest as may be lawfully

due and that except as so granted the application is in all other respects denied.

DATED: Albany, New York  
AUG 06 1930

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER