

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Alan Liepschutz :  
d/b/a Maple & Main Appliance Ctr. : 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 9/1/73 - 8/31/76. :

State of New York  
County of Albany

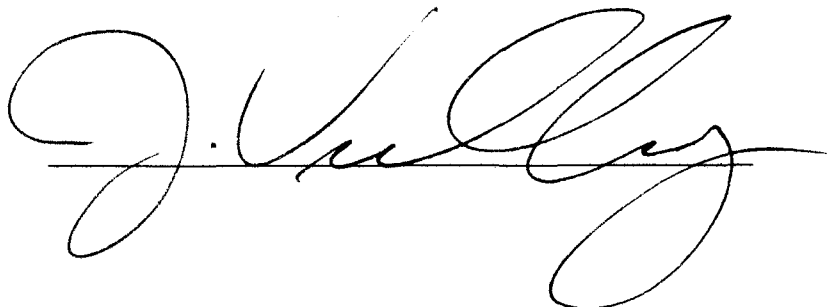
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by mail upon Alan Liepschutz, d/b/a Maple & Main Appliance Ctr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan Liepschutz  
d/b/a Maple & Main Appliance Ctr.  
Maple & Main St.  
Germantown, NY 12526  
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.

Euborah A Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Alan Liepschutz :  
d/b/a Maple & Main Appliance Ctr. : 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 9/1/73 - 8/31/76. :

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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 Morton Glickman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

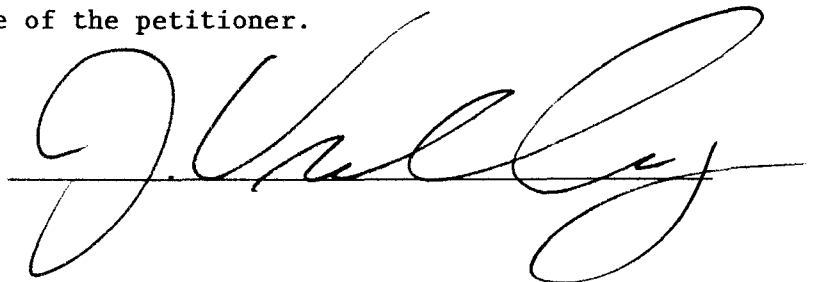
Mr. Morton Glickman  
Glickman, Karp, Ackerman  
46 Green St.  
Hudson, NY 12534

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.

  
Notary Public



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

October 17, 1980

Alan Liepschutz  
d/b/a Maple & Main Appliance Ctr.  
Maple & Main St.  
Germantown, NY 12526

Dear Mr. Liepschutz:

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  
Morton Glickman  
Glickman, Karp, Ackerman  
46 Green St.  
Hudson, NY 12534  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ALAN LIEPSHUTZ	:	DECISION
D/B/A MAPLE & MAIN APPLIANCE CENTER	:	
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 September 1, 1973 through	:	
August 31, 1976.	:	

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Petitioner, Alan Liepshutz d/b/a Maple & Main Appliance Center, Maple & Main Streets, Germantown, New York 12526, 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 September 1, 1973 through August 31, 1976 (File No. 18469).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 9, 1980 at 1:15 P.M. Petitioner appeared by Morton Glickman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether the results of a field audit performed by the Audit Division properly reflected petitioner's sales and use tax liability.

FINDINGS OF FACT

1. On December 20, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Alan Liepshutz d/b/a Maple & Main Appliance Center for the period September 1, 1973 through August 31, 1976 in the amount of \$12,600.37 tax plus penalties and interest. The Notice was issued as a result of a field audit.

2. Petitioner's primary business activity was the sale and repair of appliances. In addition, petitioner installed custom kitchens which consisted of built-in cabinets and appliances.

3. The audit conducted by the Audit Division consisted of three phases. First, the Audit Division examined all sales invoices available for the period March 1, 1975 through August 31, 1975. Deficiencies were noted where sales tax was collected but not reported, exempt sales made were unsubstantiated by certificates, and tax was charged but reported at the incorrect rate. In some instances, sales were noted in petitioner's sales journal but the corresponding sales invoice was not available. In other instances, invoices were either not entered or were incorrectly entered in the sales journal. The Audit Division determined an error rate of 106 percent based on the tax reported for the six-month period. Additional sales tax due for this phase of the audit was \$8,453.41.

Secondly, the Audit Division found in the same test period that no sales tax was charged on custom kitchen work which the petitioner considered to be capital improvements to real property. Petitioner did not pay sales tax or report a use tax on these purchases; therefore, the Audit Division held the entire sales price taxable since no capital improvement certificates were on file. An error rate of 42 percent based on tax reported for the period was determined on these sales which resulted in additional tax due of \$3,349.47.

In the third phase of the audit, purchase invoices for expense items and fixed assets were examined for the period March 1, 1975 through August 31, 1975. Purchases in the amount of \$2,175.73 were noted where no sales tax was paid. An error rate of 10 percent was determined for use tax based on tax reported. This resulted in use tax due of \$797.49.

4. Petitioner's books and records were inconsistent for the verification of an exact amount of tax in that sales were not always entered in its books of account or, at times when entered, were found to be incorrect.

5. Petitioner submitted exempt use and exempt organization certificates for some of the previously unsubstantiated exempt sales made. The audit workpapers contained a duplication of a sales invoice and an addition error in additional sales tax due for the test period. In support of his objection to the percentage determined, petitioner submitted a revised computation of the error rate. The error rate based on the above findings is 64 percent.

6. Petitioner submitted a summary of kitchen contracts for the entire audit period. These contracts were for capital improvements to real property. Gross profit percentages for the periods at issue were also submitted to show the cost of materials used in the contracts. The total cost of materials on which no sales tax was paid was \$11,377.93.

7. Petitioner contended that items of a non-recurring nature were included in the six-month period sampled for use tax on purchases. A revised computation of the error rate was submitted; however, no evidence was offered to show that tax was paid on similar purchases or that all purchase invoices were available at the time of audit.

8. Included in the test results of purchases were items for resale amounting to \$1,069.53. The error rate based on the remaining purchases subject to use tax is 5 percent.

9. Petitioner did not show that the delay for paying its sales and use tax liability was excusable.

#### CONCLUSIONS OF LAW

A. That the error rate determined by the Audit Division for additional taxable sales did not give consideration for the exempt sales made and such

computation contained mathematical errors. That the error rate for additional taxable sales is 64 percent as noted in Finding of Fact "5" and the additional sales tax due is \$5,103.95.

B. That petitioner's kitchen contracts were for capital improvements to real property; that a use tax is due on the cost of the materials used in those contracts pursuant to section 1110 of the Tax Law. That the use tax due amounts to \$682.68 as summarized in Finding of Fact "6".

C. That in accordance with Finding of Fact "8", the error rate for purchases subject to use tax is reduced to 5 percent after deleting the resale items included in the audit results. That the resultant tax due on these purchases is \$398.75.

D. That except as noted in Conclusions of Law "A", "B" and "C" above, the audit performed was proper and in accordance with section 1138(a) of the Tax Law.

E. That the penalties and interest imposed by the Audit Division are sustained.

F. That the Audit Division is directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1976; and that, except as so granted, the petition of Alan Liepshutz d/b/a Maple and Main Appliance Center is in all other respects denied.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

June 23, 1981

Morton J. Glickman  
Morton J. Glickman & Co., P. C.  
46 Green Street  
Hudson, New York 12534

RE: MAPLE & MAIN APPLIANCE CENTER

Dear Mr. Glickman:

This is to acknowledge receipt of your letter of May 22, 1981 with reference to the above named taxpayer.

The decision of the State Tax Commission dated October 17, 1980 represented an exhaustion of your client's administrative remedies. It is the policy of the State Tax Commission not to reconsider cases once they have been decided. Please note that the issue of penalty and interest was considered by the Commission in its decision.

I would suggest that you consult with an attorney as to any further remedies you may have in the courts.

Sincerely yours,

PAUL B. COBURN  
Secretary to the State Tax Commission

PBC:mac





New York State Department of  
**TAXATION and FINANCE**

**MEMORANDUM**

AD-53.1 (4/77)

TO: Paul Coburn  
FROM: Commissioner Lynch  
SUBJECT: Maple & Main Appliance Center

Inasmuch as both Commissioner Koenig and I have denied the request, and I assume Commissioner Tully will also, it is important that your letter be specific in its response.

The letter should state that the Commission in its signed decision assessed penalty and interest; that as of the date of that decision there is no further administrative action possible; and that his only recourse is to the courts.

  
Commissioner

June 9, 1981  
Attachment--file

cc--Comm. Koenig



New York State Department of  
**TAXATION and FINANCE**

**MEMORANDUM**

AD-53.1 (4/77)

TO: State Tax Commission

FROM: Paul B. Coburn

SUBJECT: Maple & Main Appliance Center

June 8, 1981

The accountants for Maple and Main Appliance Center, in a letter dated May 22, 1981, have requested that the Commission cancel the penalty and the interest in excess of the minimum in connection with an assessment resulting from a Commission decision dated October 17, 1980.

The aforesaid Commission decision reduced the amount of the tax initially assessed and in Conclusion of Law "E" specifically sustained the penalties and interest imposed by the Audit Division.

There does not appear to be anything in the aforesaid letter or in the file that would indicate the Commission should, at this time, cancel the penalty and interest imposed. I would therefore recommend that the request be denied.

PAUL B. COBURN  
Secretary to the State Tax Commission

PEC:mac

COMMISSIONER TULLY

GRANT

DENY

COMMISSIONER LYNCH

COMMISSIONER KOENIG

~~not to be used in the training program~~

MORTON J. GLICKMAN & CO., P.C.

CERTIFIED PUBLIC ACCOUNTANTS

BERNHARDT KARP, CPA  
DAVID M. ACKERMAN, CPA  
JOSEPH A. SKABOWSKI, CPA  
CARL A. FLORIO, CPA

CONSULTANTS

MORTON J. GLICKMAN, CPA  
EDWARD W. KINSLEY, CPA

State of New York  
State Tax Commission  
Albany, New York 12227

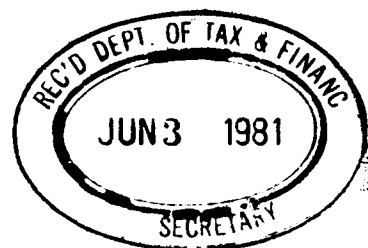
Re: Maple & Main Appliance Center I.N. NY 7551765  
Assessment Notice Number 90005259  
Date of Notice: 12-20-76  
Period Ending: 11-30-73 to 8-31-76  
Decision Dated: 10-18-80

Gentlemen:

The above captioned taxpayer was examined for New York State Tax for the periods ending 11-30-73 to 8-31-76 and was assessed \$ 12,600.37 before interest and penalties. The taxpayer decided to contest the assessment, with the undersigned as his representative. Under date of October 17, 1980 a decision was rendered by the State Tax Commission reducing the tax to \$ 6,185.38.

On or about April 20, 1981, an undated Notice of Assessment (copy enclosed) was received showing "adjusted penalty and/or interest" in the amount of \$ 6,175.87, with narrative stating that interest had been computed to May 4, 1981. On April 28, 1981 the taxpayer remitted the full unpaid tax in the amount of \$ 6,175.87 accompanied by a letter (copy enclosed) begging to have the Bureau abate the penalty and recompute the interest at simple interest. (no breakdown of penalty and/or interest has ever been furnished to the taxpayer). A copy of the reply from the Bureau is enclosed.

I now come on the behalf of the taxpayer, to beg that the Commission review the matter and give some relief to the taxpayer by abating the penalty, if not entirely, at least to a reduced amount of 5% for negligence on his part and recomputing the interest at simple interest.



Page 2.

State of New York  
State Tax Commission

The payment of the penalty as assessed will result in undue hardship for a business of this small size in a rural community and is a very large price to pay for an error in judgment of not securing professional advice in the preparation of his sales tax returns. A large portion of the tax paid can never be recovered by the taxpayer from his customers.

Your favorable consideration of this matter will help sustain this enterprise as a viable business.

Yours truly,

Morton J. Glickman & Co., P.C.



Morton J. Glickman  
Consultant

MJG:eb  
Enc. as stated  
May 22, 1981

CC: Maple & Main



New York State Department of  
**TAXATION and FINANCE**  
AUDIT DIVISION - DISTRICT OFFICE AUDIT BUREAU  
STATE CAMPUS ALBANY, NEW YORK 12227

Morton J. Glickman  
Morton J. Glickman & Co., P.C.  
46 Green Street  
Hudson, NY 12534

Maple & Main Appliance Center  
Notice #90,005,259  
I. D. # NY 7551765

Dear Mr. Glickman:

This will acknowledge your correspondence of April 23, 1981, requesting the abatement of penalties on the above Notice.

We have deposited your client's check in the amount of \$6,185.38 against the above Notice.

Review of the formal hearing determination made by the State Tax Commission indicates the penalties and interest imposed by the Audit Division were sustained.

Since the abatement of penalties was not recommended in the State Tax Commission determination, no adjustment for penalties can be made by our office because it is not within our jurisdiction to cancel them.

If you wish to appeal the decision on penalties sustained, you should direct your request to the State Tax Commission.

A handwritten signature in cursive script that reads "William Stewart".

William Stewart  
District Office Audit Bureau  
Sales Tax Section  
Telephone (518) 457-6428

WS:db

May 11, 1981

C  
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P  
Y

New York State Department of Taxation and Finance  
Sales Tax Bureau  
State Campus  
Albany, New York 12226

Re: Maple & Main Appliance Center  
Assessment Notice Number 90005259  
Date of Notice: 12-20-76  
Period Ending : 11-30-73 to 8-31-76  
Identification No.: NY7551765

Gentlemen:

Enclosed please find check in the amount of \$ 6,185.38 representing the adjusted tax due on the attached Notice of Assessment Review.

The taxpayer now begs the Bureau to review the notice and abate the penalty and recompute the interest at simple interest.

This request for abatement of the penalty and recomputation of interest is based on the undue hardship which the amount of \$ 6,175.87 requested will place on the finances of the taxpayer.

Yours truly,

Morton J. Glickman & Co., P.C.

Morton J. Glickman  
Consultant

MJG:eb  
Enc. as stated  
April 23, 1981

Y

State of New York - Department of Taxation and Finance  
Audit Division  
State Campus, Albany, New York 12227

NOTICE OF ASSESSMENT REVIEW

The assessment notice identified below has been reviewed and the result is as follows:

Maple & Main Appliance Center  
Maple & Main Sts.  
Germantown, NY 12526

ASSESSMENT NOTICE NUMBER 90005259	
DATE OF NOTICE 12/20/76	PERIOD ENDING 11/30/73-8/31/76
IDENTIFICATION NUMBER NY 7551765	

AMOUNT ASSESSED	ADJUSTED TAX DUE	ADJUSTED PENALTY AND/OR INTEREST	PAID ON ASSESSMENT	AMOUNT NOW DUE (if any)
\$ 18274.04	\$ 6185.38	\$ 6175.87	\$ 0	\$ 12361.25

EXPLANATION: Based on your recent State Tax Commission hearing, the above notice number has been reduced to consist of tax of \$6185.38 and penalty and interest of \$6175.87 computed to 5-4-81.

DB/sec

If amount is now due, attach your remittance to the copy of this notice and mail immediately in the enclosed return envelope. Make remittance payable to "New York State Sales Tax."

AU-16.6 (4/77)

MORTON J. GLICKMAN & CO., P.C.  
CERTIFIED PUBLIC ACCOUNTANTS

46 GREEN STREET  
HUDSON, NEW YORK 12534



State of New York  
State Tax Commission  
Albany, New York 12227



AD 32 (1-76)

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

State of New York  
Secretary to the State Tax Comm.  
P. O. Box 5028  
Albany, N. Y. 12205

Maple & Main  
Appliance Center

State Tax Commission

Paul B. Coburn

Maple & Main Appliance Center

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The aforesaid Commission decision reduced the amount of the tax initially assessed and in Conclusion of Law "E" specifically sustained the penalties and interest imposed by the Audit Division.

There does not appear to be anything in the aforesaid letter or in the file that would indicate the Commission should, at this time, cancel the penalty and interest imposed. I would therefore recommend that the request be denied.

---

PAUL B. COBURN  
Secretary to the State Tax Commission

PBC:mac

	<u>GRANT</u>	<u>DENY</u>
<u>COMMISSIONER TULLY</u>	_____	_____
<u>COMMISSIONER LYNCH</u>	_____	_____
<u>COMMISSIONER KOENIG</u>	_____	_____

MORTON J. GLICKMAN & CO., P.C.

CERTIFIED PUBLIC ACCOUNTANTS

BERNHARDT KARP, CPA  
DAVID M. ACKERMAN, CPA  
JOSEPH A. SKABOWSKI, CPA  
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CONSULTANTS

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State of New York  
State Tax Commission  
Albany, New York 12227

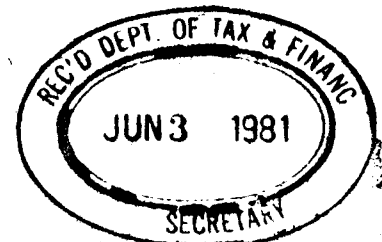
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Decision Dated: 10-18-80

Gentlemen:

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I now come on the behalf of the taxpayer, to beg that the Commission review the matter and give some relief to the taxpayer by abating the penalty, if not entirely, at least to a reduced amount of 5% for negligence on his part and recomputing the interest at simple interest.



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State of New York  
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Your favorable consideration of this matter will help sustain this enterprise as a viable business.

Yours truly,

Morton J. Glickman & Co., P.C.



Morton J. Glickman  
Consultant

MJG:eb  
Enc. as stated  
May 22, 1981

CC: Maple & Main



New York State Department of  
**TAXATION and FINANCE**  
AUDIT DIVISION - DISTRICT OFFICE AUDIT BUREAU  
STATE CAMPUS ALBANY, NEW YORK 12227

Morton J. Glickman  
Morton J. Glickman & Co., P.C.  
46 Green Street  
Hudson, NY 12534

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I. D. # NY 7551765

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If you wish to appeal the decision on penalties sustained, you should direct your request to the State Tax Commission.

*William Stewart*

William Stewart  
District Office Audit Bureau  
Sales Tax Section  
Telephone (518) 457-6428

WS:db

May 11, 1981

**C  
O  
P  
Y**

New York State Department of Taxation and Finance  
Sales Tax Bureau  
State Campus  
Albany, New York 12226

Re: Maple & Main Appliance Center  
Assessment Notice Number 90005259  
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Gentlemen:

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The taxpayer now begs the Bureau to review the notice and abate the penalty and recompute the interest at simple interest.

This request for abatement of the penalty and recomputation of interest is based on the undue hardship which the amount of \$ 6,175.87 requested will place on the finances of the taxpayer.

Yours truly,

Morton J. Glickman & Co., P.C.

Morton J. Glickman  
Consultant

MJG:eb  
Enc. as stated  
April 23, 1981

State of New York - Department of Taxation and Finance  
Audit Division  
State Campus, Albany, New York 12227

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Maple & Main Sts.  
Germantown, NY 12526

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AU-16.6 (4/77)