

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Lisa Terrace 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 12/1/72 - 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 11th day of January, 1980, he served the within notice of Determination by mail upon Lisa Terrace Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lisa Terrace Corp.  
9602 Flatlands Ave.  
Brooklyn, NY 11236

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  
11th day of January, 1980.

Joanne Knapp

[Signature]

STATE OF NEW YORK  
STATE TAX COMMISSION

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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 11th day of January, 1980, he served the within notice of Determination by mail upon Samuel Zarret the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

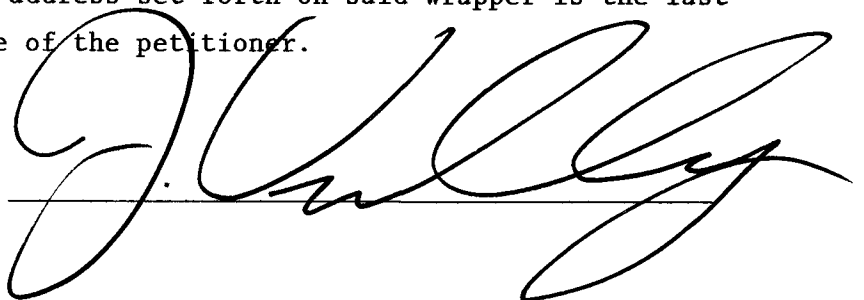
Mr. Samuel Zarret  
1085 Duston Rd.  
N. Woodmere, NY 11581

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  
11th day of January, 1980.

Joanne Knapp



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

January 11, 1980

Lisa Terrace Corp.  
9602 Flatlands Ave.  
Brooklyn, NY 11236

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  
Samuel Zarret  
1085 Duston Rd.  
N. Woodmere, NY 11581  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
LISA TERRACE CORPORATION	:	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 December 1, 1972 through	:	
November 30, 1975.	:	

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Applicant, Lisa Terrace Corporation, 9602 Flatlands Avenue, Brooklyn, New York 11236, 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 December 1, 1972 through November 30, 1975 (File No. 17420).

A small claims hearing was held before Judy Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 22, 1979 at 2:45 P.M. Applicant appeared by Samuel Zarret, Accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz and Andrew Haber, Esqs., of counsel).

#### ISSUES

I. Whether the acceptance in good faith of a customer's verbal allegation to exempt status relieves the applicant of his responsibility for the collection of sales tax.

II. Whether the Sales Tax Bureau's projection of tax due based on a test period audit properly reflected the applicant's sales tax liability.

FINDINGS OF FACT

1. Applicant, Lisa Terrace Corporation, filed New York State and Local Sales and Use Tax returns for the period December 1, 1972 through November 30, 1975.

2. On December 16, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant for \$2,587.83, plus penalties and interest of \$1,279.57, as the result of a field audit.

3. In the performance of the audit, an analysis of nontaxable sales for the sample period of September, October and November 1974 was made. One nontaxable sale in the amount of \$2,418.00 was disallowed due to unsubstantiation. A ratio for disallowance of nontaxable sales was determined to be 23.4 percent. This ratio was applied to nontaxable sales for the audit period. This procedure disqualified nontaxable sales of \$21,676.00 for the audit period.

At a post-assessment conference with the applicant, the Audit Division offered to expand the sample period to determine whether the disallowed nontaxable sale was a singular occasion or was a recurring item. The offer was declined by applicant.

4. At the time the sale in question took place, the applicant accepted in good faith a verbal statement of an exempt number assigned to Concerned Citizens of Canarsie which was assigned to the organization as a means of identifying it as a "Not for Profit Corporation."

5. During the field audit, the Audit Division requested substantiation of the exempt sale made. The applicant, at that time, requested the completion of an exemption certificate by Concerned Citizens of Canarsie. In reply to the request, it was ascertained that the organization had applied for exempt status from sales tax but had not received same as of a year later.

6. No evidence was submitted that an attempt was made on the part of the applicant to collect the tax nor was the tax paid by the organization at a later date.

7. The applicant offered no documentary evidence to dispute the other findings of the audit.

8. The applicant acted in good faith.

CONCLUSIONS OF LAW

A. That section 1132(c) of the New York State and Local Sales and Use Tax Law states, in summary, that receipts taxed by Article 28 of the Tax Law are subject to tax until the contrary is established; and the burden of proving said receipts not taxable shall be upon the person required to collect tax.

B. That the applicant, Lisa Terrace Corporation, failed to sustain the burden of proving that the receipt resulting from the sale to Concerned Citizens of Canarsie was exempt.

C. That the Audit Division's determination was performed on the applicant's available books and records in accordance with section 1138(a) of the Tax Law; that the three-month test period was the basis for the projection of the unsubstantiated exempt sales; and that the test period properly reflected the applicant's sales tax liability.

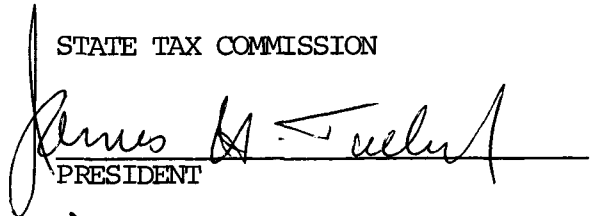
D. That the applicant acted in good faith; and that the penalties and interest in excess of the minimum statutory rate are cancelled.

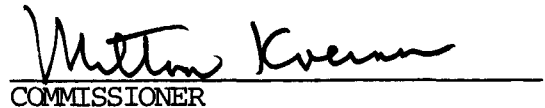
E. That the application of Lisa Terrace Corporation is granted to the extent indicated in Conclusion "D" above. The Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 16, 1976; and that, except as so granted, the application is in all other respects denied.

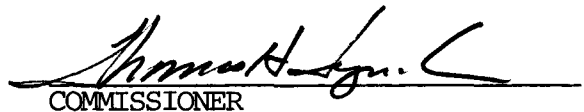
DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER