

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Robert J. Lucci

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 9/1/72 - 8/31/74. :

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 18th day of June, 1980, he served the within notice of Decision by mail upon Robert J. Lucci, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert J. Lucci
Main St.
Long Lake, NY 12847

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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for the Period 9/1/72 - 8/31/74. :

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 18th day of June, 1980, he served the within notice of Decision by mail upon Louis P. Verzillo 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. Louis P. Verzillo
20 South Broadway
Yonkers, NY 10701

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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 18, 1980

Robert J. Lucci
Main St.
Long Lake, NY 12847

Dear Mr. Lucci:

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
Louis P. Verzillo
20 South Broadway
Yonkers, NY 10701
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT LUCCI : 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 September 1, :
1972 through August 31, 1974.

Petitioner, Robert Lucci, Main Street, Long Lake, New York 12847, 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, 1972 through August 31, 1974 (File No. 10700).

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 1, 1979, at 1:15 P.M. Petitioner appeared by Louis P. Verzillo, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Eliza Schwadron, Esq., of counsel).

ISSUE

Whether Robert Lucci was a responsible officer of Adirondack Mountain Resort, Inc. within the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law.

FINDINGS OF FACT

1. On December 15, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Adirondack Mountain Resort, Inc. (hereinafter Adirondack) and Robert Lucci, William Safford and Mildred Safford, individually and as officers, for the period September 1, 1972 through August 31, 1974 in the amount of \$16,371.00 tax plus penalties and interest.

2. Robert Lucci filed a timely protest to the above notice on the grounds that he was not an active officer of Adirondack.

3. Petitioner Robert Lucci was a shareholder and Treasurer of Adirondack. Petitioner was also the sole shareholder of Lucci Realty Corporation which owned the premises leased by Adirondack.

4. During the period in issue, petitioner resided in Yonkers, New York. He owned and operated a business in the southern part of New York State to which he devoted his full time. Petitioner was not active in the operation of Adirondack which was run by William Safford, President and Mildred Safford, Secretary, who were the petitioner's in-laws at the time.

5. In support of his application, canceled checks were submitted for the period January 2 through November 7, 1973. The checks submitted were all signed by Mildred Safford or William Safford and were imprinted with their names along with the corporate name. Robert Lucci never signed checks in behalf of Adirondack.

6. Sales tax returns filed for the period at issue were all signed by Mildred Safford, Secretary of the corporation.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides in part that every person required to collect any tax imposed by Article 28 and 29 shall be personally liable for the tax imposed.

B. That section 1131(1) of the Tax Law defines "Persons required to collect tax" to include any officer or employee of a corporation, who as such officer or employee is under duty to act for such corporation in complying with any requirement of Articles 28 and 29.

C. That petitioner Robert Lucci was not an officer or employee who was under a duty to act for such corporation in complying with any requirement of Article 28 or 29.

D. That the petition of Robert Lucci is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against Adirondack Mountain Resort, Inc. on December 15, 1975 is amended to reflect the deletion of petitioner Robert Lucci's name as responsible officer.

DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER