

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Adam Meldrum & Anderson Co., Inc. :  
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 9/1/70-11/30/73. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Adam Meldrum & Anderson Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Adam Meldrum & Anderson Co., Inc.  
389 Main St.  
Buffalo, NY 14203

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  
13th day of February, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Adam Meldrum & Anderson Co., Inc. :  
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 9/1/70-11/30/73. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Gerald R. Lucas 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. Gerald R. Lucas  
c/o Adam Meldrum & Anderson Co., Inc.  
389 Main St.  
Buffalo, NY 14203

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  
13th day of February, 1980.

Joanne Krapp

J. Vredenburg

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

February 13, 1980

Adam Meldrum & Anderson Co., Inc.  
389 Main St.  
Buffalo, NY 14203

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  
Gerald R. Lucas  
c/o Adam Meldrum & Anderson Co., Inc.  
389 Main St.  
Buffalo, NY 14203  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
ADAM MELDRUM & ANDERSON CO., INC.	:	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 September 1, 1970 through	:	
November 30, 1973.	:	

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Applicant, Adam Meldrum & Anderson Co., Inc., 389 Main Street, Buffalo, New York 14203, 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 September 1, 1970 through November 30, 1973 (File No. 11103).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, One West Genesee Street, Buffalo, New York, on April 23, 1979 at 1:15 P.M. Applicant appeared by Gerard R. Lucas, Vice-President, Treasurer. The Audit Division appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau correctly determined an additional tax due from applicant by disallowing the deductions taken on applicant's returns for accounts considered uncollectible.

FINDINGS OF FACT

1. On December 17, 1974, the Sales Tax Bureau, as the result of an audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Adam Meldrum & Anderson Co., Inc., for the period September 1, 1970 through November 30, 1973 for \$27,107.84, plus penalty and interest of \$9,646.24, for a total of \$36,754.08.

2. Applicant executed a consent extending the time within which to issue an assessment of sales and use taxes for the period September 1, 1970 through November 30, 1971 to December 20, 1974.

3. On February 19, 1975, applicant filed an application for revision of the aforementioned determination.

4. Applicant, Adam Meldrum & Anderson Co., Inc., owned and operated six retail department stores located in and around the Buffalo area.

5. The Sales Tax Bureau, based on an audit of applicant's books and records, determined additional sales and use taxes due in the amount of \$149,642.11. On September 27, 1974, applicant signed a consent to fixing of tax whereby applicant agreed to and paid sales and use taxes of \$122,534.27.

The unresolved issue concerned deductions for bad debts that were partially disallowed by the Sales Tax Bureau.

6. Applicant offered three types of credit accounts to its customers. These accounts were 30-day accounts, revolving credit accounts, and contract accounts which are also revolving accounts.

Applicant wrote off its bad debt losses monthly based on the unpaid balance of individual accounts that had been deemed uncollectible by applicant's attorney or a collection agency. The total of uncollectible balances on individual accounts were deducted from taxable sales reported on applicant's sales tax returns. Applicant erroneously included attorney's fees and finance charges in its total deductions, but these deductions are not at issue since the applicable sales taxes on said fees and charges were included in the consent referred to in Fact "5". Applicant has thus paid sales tax in proportion to the amount actually received on account.

7. The Sales Tax Bureau applied any payments made by a customer first to the entire amount of the sales tax on the item purchased and any balance to the purchase price and therefore disallowed any bad debts claimed where applicant received an amount equal to or greater than the sales tax due. If the amount received by applicant was less than the amount of the tax computed on the sales price, a partial bad debt credit was allowed limited to the unpaid portion. A full bad debt credit was allowed only in those instances in which no payment had been received.

CONCLUSIONS OF LAW

A. That applicant is entitled to a refund or credit of sales taxes paid in full on sales where the customer defaults in payment and the account subsequently becomes uncollectible (Abraham S. Strauss v. Tully, 47 NY2d 207); that accordingly, the Sales Tax Bureau erred in determining the additional tax liability of applicant on accounts deemed uncollectible.

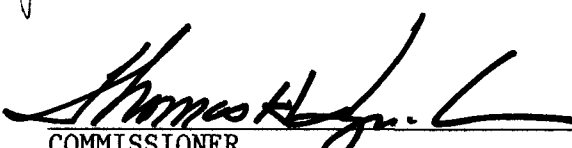
B. That the application of Adam Meldrum & Anderson Co., Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 17, 1974 is cancelled.

DATED: Albany, New York

**FEB 13 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER