

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Carole Mervis

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 6/21/75-8/31/75. :

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 6th day of June, 1980, he served the within notice of Determination by mail upon Carole Mervis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carole Mervis
Parker Towers, Apt. 2112
Hallandale, FL

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 June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

Carole Mervis
Parker Towers, Apt. 2112
3140 So. Ocean Dr.
Hallandale, FL

Dear Ms. Mervis:

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) 1139 & 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CAROLE MERVIS	:	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 July 21, 1975 through	:	
August 31, 1975.	:	

Applicant, Carole Mervis, Parker Towers, Apt. 2112, 3140 S. Ocean Drive, Hallandale, Florida, 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 July 21, 1975 through August 31, 1975 (File No. 15029).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 28, 1979 at 10:45 A.M. Applicant appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund of sales tax paid on the rental of a hotel room.

FINDINGS OF FACT

1. On January 8, 1976, applicant, Carole Mervis, filed an application for a refund of \$167.00 for sales taxes which were paid to the Stanhope Hotel for the rental of a hotel room. Said refund was claimed on the basis that applicant was a permanent resident of New York City for a period in excess of 90 days.

2. On March 5, 1976, the Audit Division denied the refund on the grounds that applicant did not reside in the Stanhope Hotel for at least ninety consecutive days. The applicant timely protested the above denial.

3. Applicant occupied a room at the Stanhope Hotel from July 21, 1975 to August 31, 1975. On September 1, 1975, applicant moved to the Hyde Park Hotel because of a 50 percent rate increase in the room rental and dissatisfaction with the accommodations at the Stanhope Hotel. Applicant remained at the Hyde Park Hotel for approximately seven months thereafter due to the extended illness of her husband. After 90 days, the Hyde Park Hotel refunded the sales tax paid by applicant on the room rental. The Hyde Park Hotel is owned by the same corporation that operated the Stanhope Hotel.

CONCLUSIONS OF LAW

A. That section 1101(c)(5) of the Tax Law defines permanent resident as "any occupant of any room or rooms in a hotel for at least ninety consecutive days..."

B. That applicant was an occupant in the Stanhope Hotel for forty-two days and therefore was not a permanent resident within the meaning and intent of section 1101(c)(5) of the Tax Law. Accordingly, applicant is not entitled to a refund of the sales tax imposed under section 1105(e) of the Tax Law.

C. That the application of Carole Mervis is hereby denied and refund denial issued March 5, 1976 is sustained.

DATED: Albany, New York

JUN 6 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER