

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Montauk Automatic Inc. :

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 6/1/71-5/31/74. :

State of New York
County of Albany

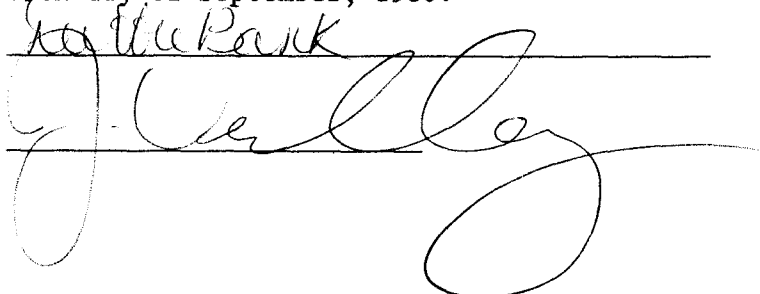
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by mail upon Montauk Automatic Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Montauk Automatic Inc.
120 Toledo St.
Farmingdale, NY 11735

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
19th day of September, 1980.



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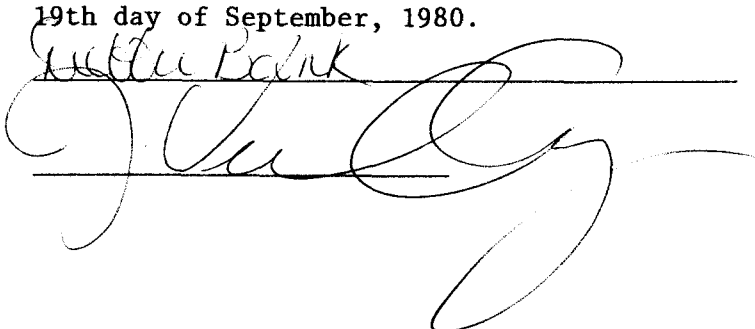
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by mail upon Eugene L. Winston the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Eugene L. Winston
3000 Marcus Ave.
New Hyde Park, NY 11040

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
19th day of September, 1980.



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

September 19, 1980

Montauk Automatic Inc.
120 Toledo St.
Farmingdale, NY 11735

Gentlemen:

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
Eugene L. Winston
3000 Marcus Ave.
New Hyde Park, NY 11040
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MONTAUK AUTOMATIC, INC.	:	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 June 1, 1971 through May 31,	:	
1974.	:	

Petitioner, Montauk Automatic, Inc., 120 Toledo Street, Farmingdale, New York 11735, filed a petition for revision of a determination or for refund of sales and use taxes due under Articles 28 and 29 of the Tax Law for the period June 1, 1971 through May 31, 1974 (File No. 12832).

Formal hearings were duly held. The first was held on February 14, 1977, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harvey Baum, Hearing Officer. Petitioner appeared by Eugene L. Winston, CPA. The Audit Division appeared by Peter Crotty, Esq. (Alfred Rubinstein, Esq., of counsel). The second was held on December 19, 1978 at the same offices before Herbert Carr, Hearing Officer. Petitioner appeared by Eugene L. Winston, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel). The third and fourth hearings were held on March 22 and 29, 1979 at the same offices before James T. Prendergast, Hearing Officer. Petitioner appeared at these hearings by Herbert Granoff, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Audit Division correctly determined the sales and use taxes due from petitioner for the period June 1, 1971 through May 31, 1974.

FINDINGS OF FACT

1. Petitioner, Montauk Automatic, Inc., commenced its business operations on or about May 28, 1971. Its activities consisted of placing coin-operated machines, such as juke boxes, on location.

2. On September 6, 1974, applicant executed a consent extending the time within which to issue an assessment for sales and use taxes for the period June 1, 1971 through May 31, 1972 to September 20, 1975.

3. On September 19, 1975, as the result of a field audit, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued against petitioner as follows:

<u>Period Ended</u>	<u>Tax Due</u>	<u>Penalty and Interest</u>	<u>Total Due</u>
8-31-71	\$16,985.00	\$ 8,832.20	\$25,817.20
11-30-71	226.58	111.02	337.60
2-29-72	247.96	114.06	362.02
5-31-72	178.30	76.67	254.97
8-31-72	330.72	132.29	463.01
11-30-72	131.25	48.56	179.81
2-29-73	39.38	13.39	52.77
5-31-73	36.75	11.39	48.14
8-31-73	45.97	12.87	58.84
11-30-73	94.75	43.59	138.34
2-28-74	17.50	7.00	24.50
5-31-74	5,570.04	1,893.81	7,463.85
TOTALS	\$23,904.20	\$11,296.85	\$35,201.05

4. Petitioner subsequently filed a timely petition for revision of the determination.

5. On audit, the fixed asset account which petitioner maintained was examined. Due to petitioner's failure to produce documentation to substantiate the payment of sales tax upon the acquisition of fixed assets in the amount of \$292,648.00 or the collection of sales tax upon sales of fixed assets in the amount of \$101,380.00, the examining auditor computed tax liabilities for said items of \$17,592.84 and \$6,311.36, respectively.

6. Petitioner does not protest the entire assessment but does argue:

- A. That it paid the tax on assets acquired from vendors Albert Simon, Inc. and Atlantic New York Corp. during the period ended August 31, 1971;
- B. That on the sale of fixed assets in the period ended May 31, 1974, purchaser A. J. Kobler paid the tax directly to the State; and
- C. That on its sales of used motor vehicles, the purchasers had to pay the tax when the vehicles were registered.

7. The Audit Division stipulated that purchaser A. J. Kobler had in fact paid directly to the State the tax due on the assets and conceded that the tax assessed of \$5,570.04 for the period ended May 31, 1974, was in error.

8. Petitioner, through the introduction of exhibits and examination of witnesses, established that it paid sales tax to vendors Albert Simon, Inc. and Atlantic New York Corp. upon the assets which were acquired from them. Said transactions totaled \$280,551.00 of which \$14,915.14 represented sales tax and \$17,053.04 a finance charge.

9. Petitioner offered no evidence to demonstrate that the purchasers of its used motor vehicles had paid the tax due to the State.

CONCLUSIONS OF LAW

A. That section 1132(a) of the Tax Law provides that every person required to collect the tax shall collect the tax from the customer when collecting the price to which it applies.

B. That petitioner was a person required to collect tax and is under the duty to collect the same when making a sale which is subject to taxation.

C. That the petition of Montauk Automatic, Inc. is granted to the extent indicated in Findings of Fact "7" and "8" above; that the Audit Division is directed to accordingly modify the notice of determination issued September 19,

1975 to reflect the following tax due:

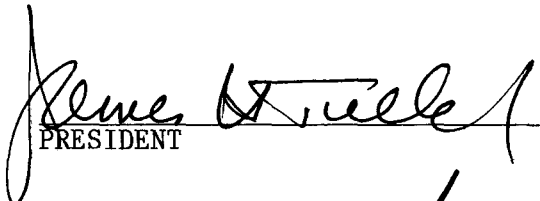
<u>Period Ended</u>	<u>Tax Due</u>
8/31/71	\$ 151.94
11/30/71	226.58
2/29/72	247.96
5/31/72	178.30
8/31/72	330.72
11/30/72	131.25
2/29/73	39.38
5/31/73	36.75
8/31/73	45.97
11/30/73	94.75
2/28/74	17.50
5/31/74	.00
Total Tax Due	\$1,501.10

That, in all other respects, the petition is denied.

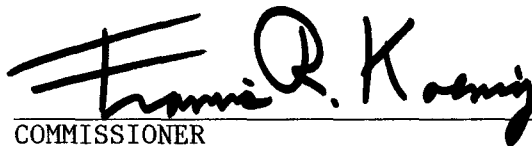
DATED: Albany, New York

STATE TAX COMMISSION

SEP 19 1980


PRESIDENT


COMMISSIONER


COMMISSIONER