

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Paul Nielsen 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 3/1/75-2/28/75. :

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 Paul Nielsen Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Nielsen Inc.  
5th Ave. at 69th St.  
Brooklyn, NY 11220

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

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Paul Nielsen Inc. :

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for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 3/1/75-2/28/75. :

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 Samuel Boodman 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 Boodman  
10 E. 40th St.  
New York, NY 10016

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

J. Vredenburg

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

January 11, 1980

Paul Nielsen Inc.  
5th Ave. at 69th St.  
Brooklyn, NY 11220

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 Boodman  
10 E. 40th St.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
PAUL NIELSEN, 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 March 1, 1972 through February 28,	:	
1975.	:	

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Applicant, Paul Nielsen, Inc., Fifth Avenue at 69th Street, Brooklyn, New York 11220, 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 March 1, 1972 through February 28, 1975 (File No. 10550).

A formal hearing was held before William Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 8, 1977 at 2:45 P.M., and was continued on February 14, 1978 at 2:45 P.M. Applicant appeared by Samuel Boodman. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alfred Rubenstein and James Morris, Esqs., of counsel).

ISSUE

Whether applicant is liable for a balance of sales tax found in its Sales Tax Payable account.

FINDINGS OF FACT

1. On December 16, 1975 as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Tax Due against applicant, Paul Nielsen, Inc., for taxes due of \$23,271.89, plus penalty and interest of \$6,889.02, for a total due of \$30,160.91.

2. As the result of pre-hearing conferences held on June 14, 1976 and on October 19, 1976, applicant's additional tax liability was reduced to \$17,189.50. Applicant agreed to and paid \$6,287.14 of the reduced tax due. The balance of \$10,902.36 remains at issue.

3. The audit of applicant's books and records by the Sales Tax Bureau disclosed a balance of \$10,902.36 in applicant's Sales Tax Payable account. The Sales Tax Bureau's auditor determined that this balance was due New York State and that after discussing it with applicant, nothing was brought forward to show that the balance was not due.

4. Applicant contends that the disputed amount was a bookkeeping entry made in 1965 for the purpose of reducing Federal taxable income, and that the amount did not represent sales tax due New York State from sales tax collections. Applicant introduced ledger sheets indicating that a general journal entry was made on January 31, 1965 where the account's "Service Charge" was debited and "New York State Sales Tax" credited for \$12,855.60. Applicant's "Service Charge" represented the finance charge to its customers for past due amounts.

#### CONCLUSIONS OF LAW

A. That applicant maintained a reserve in its Sales Tax Payable account. This amount was not sales tax collected, nor sales tax due on taxable sales; therefore, the tax of \$10,902.36 is cancelled.

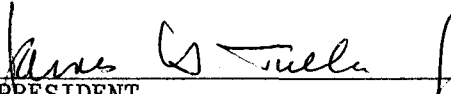
B. That the application of Paul Nielsen, Inc. is granted to the extent indicated in Finding of Fact "2" and Conclusion of Law "A"; that the Sales Tax Bureau is directed to modify the Notice of Determination and Demand for Payment

of Sales and Use Tax Due issued on December 16, 1975; 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