

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Joseph Perlman (Purchaser) :  
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 8/1/65-2/29/68. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

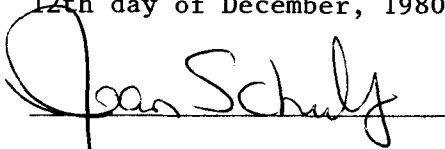
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Determination by mail upon Joseph Perlman (Purchaser), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

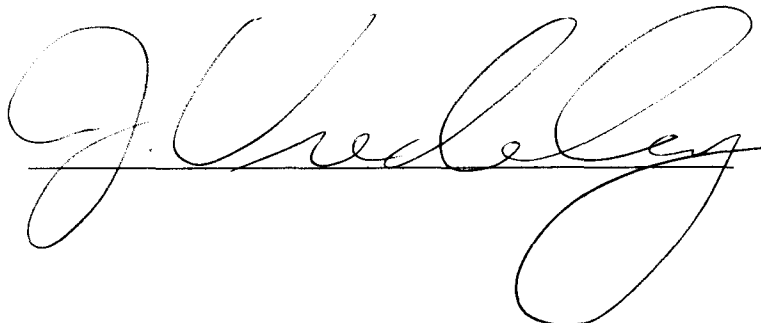
Joseph Perlman (Purchaser)  
349 W. Broadway  
New York, NY 10007

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  
12th day of December, 1980.

  
Jean Schulz

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Joseph Perlman (Purchaser) :  
for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
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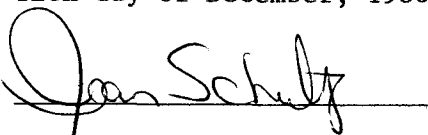
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Determination by mail upon Richard Braverman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

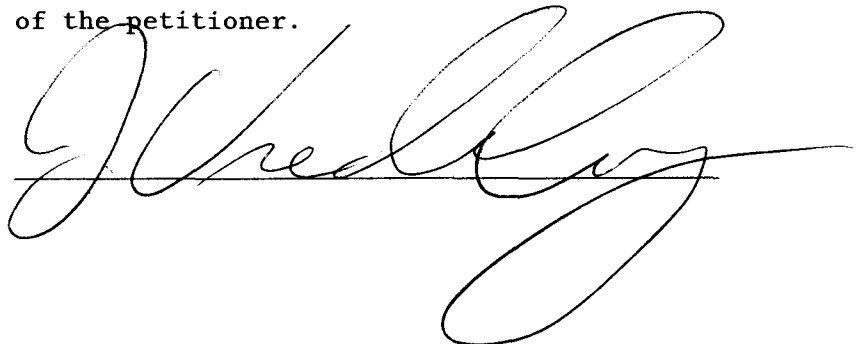
Mr. Richard Braverman  
67 Wall St.  
New York, NY 10005

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  
12th day of December, 1980.

  
Joan Schultz

  
Jay Vredenburg

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

December 12, 1980

Joseph Perlman (Purchaser)  
349 W. Broadway  
New York, NY 10007

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  
Richard Braverman  
67 Wall St.  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
JOSEPH PERLMAN (Purchaser)	:	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 August 1, 1965 through February 29,	:	
1968.	:	

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Applicant, Joseph Perlman (Purchaser), 349 West Broadway, New York, New York 10007, 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 August 1, 1965 through February 29, 1968 (File No. 10185).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 13, 1978 at 9:15 A.M. Applicant appeared by Richard Braverman, Esq. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether applicant purchased assets from Klemens Pharmacy, Inc. or were such purchases made from Edith Sobel, Administratrix of the Estate of David Sobel.

II. Whether the Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant was timely filed for the period August 1, 1965 through February 29, 1968.

III. Whether the amount on the above notice was in excess of applicant's tax liability.

FINDINGS OF FACT

1. Applicant was a registered vendor, d/b/a Joe Perlman, Auctioneer and Appraiser.

2. During January 1968, Klemens Pharmacy, Inc. was in the process of liquidating due to the death of Mr. David Sobel, the sole shareholder. On or about January 18, 1968, applicant, Joseph Perlman, purchased certain stock and fixtures of Klemens Pharmacy, Inc. for \$900.00. Applicant issued a check made payable to the Estate of David Sobel for \$900.00. The sales agreement was signed by Mrs. Edith Sobel (the wife of Mr. David Sobel). Mrs. Sobel was the treasurer of Klemens Pharmacy, Inc. and was also the Administratrix of the Estate of David Sobel.

3. Applicant, Joseph Perlman, did not notify the Sales Tax Bureau of said transaction. Applicant contended that it purchased the assets from Edith Sobel, Administratrix of the Estate of David Sobel, rather than from Klemens Pharmacy, Inc.

4. On April 1, 1969, Edith Sobel as treasurer of Klemens Pharmacy, Inc. (Seller) filed with the Sales Tax Bureau a Notification of Sale, Transfer or Assignment in Bulk (Form ST-274), indicating the purchaser to be Joseph Perlman.

5. On May 13, 1970, the Sales Tax Bureau, as the result of an audit of available books and records of Klemens Pharmacy, Inc., issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Klemens Pharmacy, Inc., c/o Edith Sobel. The notice was issued for \$1,040.75, including penalty and interest of \$177.91, for the period August 1, 1965 through February 29, 1968. The Sales Tax Bureau obtained a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes Due, signed by Edith Sobel, for said audit period. The consent extended the period to any time on or before December 20, 1970.

6. On March 12, 1971, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Joseph Perlman (Purchaser) "In accordance with section 1141(c) of the Tax Law", indicating the amount due from seller, Klemens Pharmacy, Inc., to be \$1,040.75, and the amount due from Joseph Perlman (Purchaser) to be \$917.20, on the basis of non-payment of the assessment by seller.

CONCLUSIONS OF LAW

A. That Klemens Pharmacy, Inc. was in the process of liquidation and not yet dissolved at the time applicant, Joseph Perlman, purchased said corporation's assets; therefore, the applicant purchased the assets from Klemens Pharmacy, Inc. rather than Edith Sobel, Administratrix of the Estate of David Sobel, and accordingly such transaction constituted a bulk sale in accordance with the meaning and intent of section 1141(c) of the Tax Law.

B. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against the purchaser, Joseph Perlman, was not timely filed. That section 1141(c) of the Tax Law provides:

"...Within one hundred-eighty days (changed to ninety days effective January 1, 1978) of receipt of the notice of sale...the tax commission shall give notice to the purchaser...of the total amount of any tax or taxes which the state claims to be due from the seller...and whenever the tax commission shall fail to give such notice to the purchaser...such failure will release the purchaser...from any further obligation to withhold any sums of money...."

That the Sales Tax Bureau received notice of the sale on April 1, 1969 and gave notice to the purchaser, Joseph Perlman, of taxes due from the seller on March 12, 1971, nearly two years after receipt of the notice of sale.

C. That the issue as to whether the amount on the notice of determination was in excess of applicant's tax liability is moot.

D. That the application of Joseph Perlman is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 12, 1971 is cancelled.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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

December 12, 1980

Joseph Perlman (Purchaser)  
349 W. Broadway  
New York, NY 10007

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  
Richard Braverman  
67 Wall St.  
New York, NY 10005  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
JOSEPH PERLMAN (Purchaser)	:	DETERMINATION
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- II. Whether the Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant was timely filed for the period August 1, 1965 through February 29, 1968.
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DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

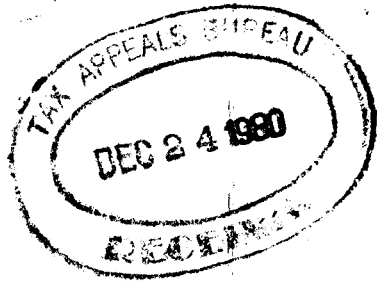
STATE CAMPUS

ALBANY, N. Y. 12227

*[Handwritten signature]*

Joseph Perlman (Purchaser)  
349 W. Broadway  
New York, NY 10007

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1-7-81

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