

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Robert Potteiger

:

:

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 3/1/72-2/28/74. :

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 14th day of March, 1980, he served the within notice of Determination by mail upon Robert Potteiger, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Potteiger
236 Spring Run, Rt. 1
Clifton Springs, NY

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
14th day of March, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Robert Potteiger

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Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 3/1/72-2/28/74. :

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 14th day of March, 1980, he served the within notice of Determination by mail upon Arnold R. Petralia the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

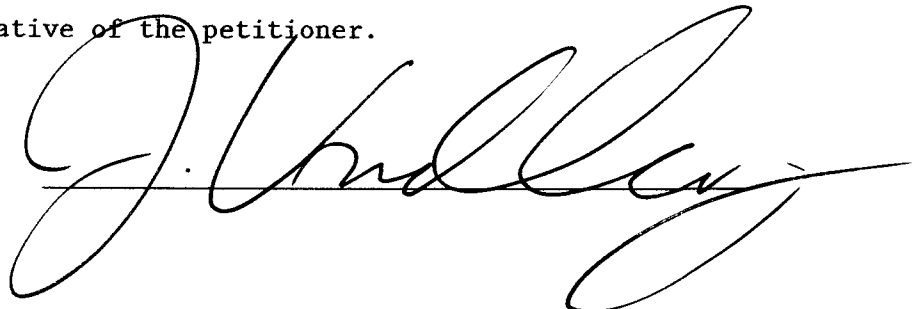
Mr. Arnold R. Petralia
920 Union Trust Bldg.
19 Main St.
Rochester, NY 14614

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
14th day of March, 1980.

Joanne Krapp



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

March 14, 1980

Robert Potteiger
236 Spring Run, Rt. 1
Clifton Springs, NY

Dear Mr. Potteiger:

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
Arnold R. Petralia
920 Union Trust Bldg.
19 Main St.
Rochester, NY 14614
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
ROBERT POTTEIGER	:	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	:	
Periods March 1, 1972 through February 28,	:	
1974.	:	

Applicant, Robert Potteiger, 236 Spring Run Rt. 1, Clifton Springs, New York, 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 periods March 1, 1972 through February 28, 1974 (File No. 10232).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on October 24, 1978 at 9:00 A.M. Petitioner appeared by Arnold R. Petralia, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether applicant was a "person required to collect tax", under sections 1131(1) and 1133(a) of the Tax Law, with regard to Modulex Enterprises, Inc.

FINDINGS OF FACT

1. On April 17, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Robert Potteiger, for \$34,247.15, plus penalty and interest of \$10,209.58, for a total of \$44,456.73. The liability was predicated on applicant being an officer of Modulex Enterprises, Inc. ("Modulex").

2. On April 17, 1975, the Sales Tax Bureau also issued a Notice of

Determination and Demand for Payment of Sales and Use Taxes Due against Modulex for \$34,247.15, plus penalty and interest of \$10,209.58, for a total of \$44,456.73. Modulex filed no application for revision or for refund of said taxes under Articles 28 and 29 of the Tax Law for the periods in issue, nor was an appearance made on behalf of Modulex.

3. During the periods at issue, Modulex was a manufacturer of modular homes, selling only to dealers for resale . Since no exemption certificates were produced, on audit, all sales were held to be taxable. A list of buyers produced by applicant indicated that only dealers bought from Modulex. Applicant, Robert Potteiger, collected sales tax as a dealer and remitted same to the Tax Department.

4. Applicant, Robert Potteiger, was president and sole stockholder of Prestige Acres, Incorporated, which was formed in 1969 to sell deluxe mobile homes and develop parks. Homes were bought from several manufacturers throughout the United States and from Modulex, the only New York manufacturer. All homes were bought for resale. Sales tax was collected on sales. Applicant was asked repeatedly to invest in Modulex. In May, 1973, Modulex was under-capitalized and owed suppliers, banks and the Internal Revenue Service. Modulex had customer orders but no money with which to function. Applicant kept extensive handwritten notes of meetings with principals of Modulex. Marine Midland Bank loaned applicant, personally, \$30,000.00 to keep Modulex operating until the Small Business Administration approved a greater amount. The Small Business Administration loan application listed officers of Modulex. Applicant, Robert Potteiger, did not appear thereon. With the \$30,000.00 borrowed, applicant purchased necessary supplies for Modulex in order to work on several of the units. The first checks were written about June, 1973. As units were sold, funds were returned to applicant's special account. When Modulex finally failed, applicant was able to recoup some of his loss by taking unfinished

units. Plans for applicant to become an officer of Modulex Enterprises, Inc. depended on the Small Business Administration loan. Said loan was denied because the corporation had a negative worth and because it was felt that the officers of Modulex had sufficient personal wealth. Robert Potteiger was never an employee or officer of Modulex, and never signed any tax returns for said term. He was an investor.

CONCLUSIONS OF LAW

A. That section 1131(1) of the Tax Law provides:

"'Persons required to collect tax' or 'persons required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services; ...Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."

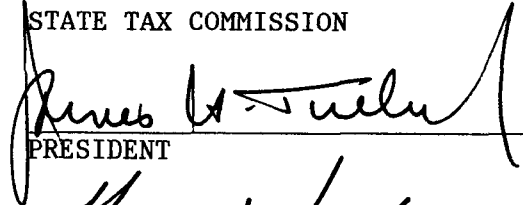
B. That section 1133(a) of the Tax Law provides that "...every person required to collect any tax imposed...shall be personally liable for the tax imposed, collected or required to be collected...".

C. That applicant, Robert Potteiger, was never an officer or an employee of Modulex Enterprises, Inc. and was never a person required to collect any tax, nor was he under any duty to act for said corporation in compliance with Articles 28 and 29 of the Tax Law; therefore, the application of Robert Potteiger is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 17, 1975 is cancelled.

DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER