

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Sam's Limousine Service, 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 3/1/72-5/31/75. :

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 14th day of November, 1980, he served the within notice of Determination by mail upon Sam's Limousine Service, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sam's Limousine Service, Inc.
c/o Sam Domenico
170 Nassau Drive
Albertson, NY 11507

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 November, 1980.

Abraham A Bank

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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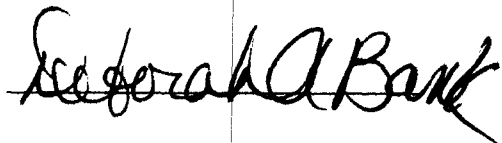
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Determination by mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

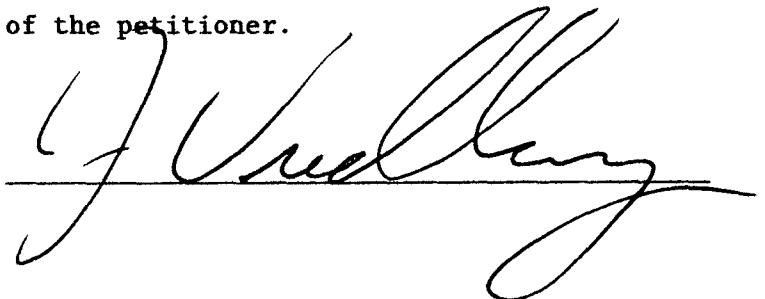
Mr.
Morris Zackowitz & Milton E. Jacobowitz
1618 Central Ave.
Far Rockaway, NY 11691

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 November, 1980.





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

November 14, 1980

Sam's Limousine Service, Inc.
c/o Sam Domenico
170 Nassau Drive
Albertson, NY 11507

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
Morris Zackowitz & Milton E. Jacobowitz
1618 Central Ave.
Far Rockaway, NY 11691
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SAM'S LIMOUSINE SERVICE, 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 May 31, 1975.	:	

Applicant, Sam's Limousine Service, Inc., c/o Sam Domenico, 170 Nassau Drive, Albertson, New York 11507, 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 May 31, 1975 (File No. 11188).

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 May 18, 1978 and January 10, 1979. Applicant appeared by Morris Zackowitz, PA and Milton E. Jacobowitz, Esq. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether the results of a Sales Tax Bureau audit reflected the proper sales and use tax liability of applicant.

II. Whether applicant, Sam's Limousine Service, Inc., is an omnibus corporation not subject to sales tax on purchases of vehicles, gasoline, oil, parts and repairs to vehicles utilized in its business.

FINDINGS OF FACT

1. Applicant, Sam's Limousine Service, Inc., of 84-23 Rockaway Boulevard, Ozone Park, New York, New York 11416, filed sales tax returns for the period March 1, 1972 through May 31, 1974. Applicant's sales tax return for the quarter ended May 31, 1972 was received by the Sales Tax Bureau (Mineola D.O.) on September 28, 1972. The sales tax return for the quarter ended August 31, 1972 was received by the Sales Tax Bureau on October 6, 1972.

2. During the period in issue applicant operated three-seven (7) passenger limousines and one-fifteen (15) passenger minibus. On March 14, 1959, the State of New York Public Service Commission granted applicant, Sam's Limousine Service, Inc., a permit as a contract carrier of passengers, by motor vehicle, for the transportation of:

(a) Passengers on a door-to-door, non-scheduled, individual fare basis between Kings County, on the one hand, and, on the other, all points in the Towns of Thompson, Bethel, Fallsburg and Liberty.

(b) Passengers on an individual fare basis between a (specified) section of Kings County, on the one hand, and, on the other, Aqueduct and Jamaica Racetrack, Belmont Park Racetrack, Roosevelt Raceway and Yonkers Raceway.

On occasion, applicant also hired out the vehicles for weddings for which it collected sales tax.

3. On September 30, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (estimated assessment) against applicant, Sam's Limousine Service, Inc., and Sam Dominico, individually as an officer, for the period March 1, 1972 through May 31, 1975, for sales taxes due of \$8,128.71, plus penalty and interest of \$2,590.70, for

a total of \$10,719.41. The Sales Tax Bureau issued the estimated assessment because applicant failed to make its books and records available for audit. The Sales Tax Bureau disallowed all nontaxable sales reported by applicant for the period March 1, 1972 through November 30, 1973 (\$51,628.00), plus it estimated taxable sales of \$10,000.00 per quarter for the period December 1, 1973 through May 31, 1975.

4. The Sales Tax Bureau did not obtain a consent extending the period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law.

5. Applicant subsequently submitted its books and records for audit. The Sales Tax Bureau compared applicant's bank deposits for the calendar year 1974 with its gross sales reported on its U.S. Corporation Income Tax Return (Form 1120) for 1974. The bank deposits for said year were \$11,545.08 higher than the sales reported on Form 1120, resulting in a 41.46 percent under-reporting margin of error. The Sales Tax Bureau applied this margin of error to gross sales reported and arrived at adjusted gross sales of \$133,370.00. It estimated taxable sales to be 50 percent (\$66,685.00) and after the allowance for taxable sales reported, the additional taxable sales were \$62,223.00. The Sales Tax Bureau also determined that, for the audit period, applicant did not pay sales tax on purchase expenses of \$33,379.00 for:

(a) repairs and miscellaneous expenses for vehicles (\$12,091.00),
and

(b) purchases of gas and oil in bulk quantities from major oil
companies which it stored on premises (\$21,288.00).

Based on this audit, the Sales Tax Bureau recommended that the Notice of Determination and Demand for Payment, issued September 30, 1975, for the

period March 1, 1972 through May 31, 1975, be revised as follows:

(a) additional taxable sales	\$ 62,223.00
(b) purchases subject to use tax	33,379.00
(c) total additional sales and use taxes due	6,958.92

6. Applicant did not pay sales tax to its suppliers for repairs, miscellaneous expenses, gasoline and oil nor did it report a use tax on such items used in its limousine service.

7. Applicant contended that it is an omnibus corporation which is not subject to sales or use taxes.

CONCLUSIONS OF LAW

A. That the sales tax quarter ended May 31, 1972, was beyond the statute of limitations in accordance with the meaning and intent of section 1147(b) of the Tax Law and is to be deleted from the Notice of Determination and Demand for Payment issued against applicant on September 30, 1975.

B. That applicant, Sam's Limousine Service, Inc., provided a transportation service, the receipts from which are not subject to the imposition of sales tax within the meaning and intent of section 1105 of the Tax Law. That applicant has properly collected the sales tax on those occasions where it hired out its vehicles for weddings. That the additional taxable sales computed by the Sales Tax Bureau constitute receipts from a transportation service, and accordingly, the sales tax computed thereon is cancelled.

C. That applicant has not shown that it is an "omnibus carrier" pursuant to 20 NYCRR 525.9; that 20 NYCRR 525.9(a)(2) defines "omnibus" as a motor vehicle with a seating capacity of more than seven (7) passengers used for the transportation of passengers for hire. Applicant did have one such vehicle,

but the other vehicles had only seven passenger capacities and applicant has not substantiated what percentage of income was derived from said omnibus. That, accordingly, applicant is subject to use tax on all expenses related to its vehicles.

D. That the application of Sam's Limousine Service, Inc. is granted to the extent pursuant to Conclusions of Law "A" and "B" supra. That the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 30, 1975; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER