

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Temple Shalom of Matawan, N.J. :  
c/o Kenneth Briller : 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 12/1/76-2/28/77. :

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State of New York  
County of Albany

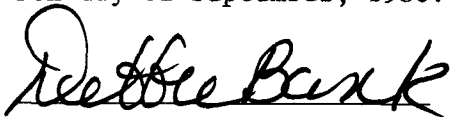
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of September, 1980, he served the within notice of Decision by mail upon Temple Shalom of Matawan, N.J., c/o Kenneth Briller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

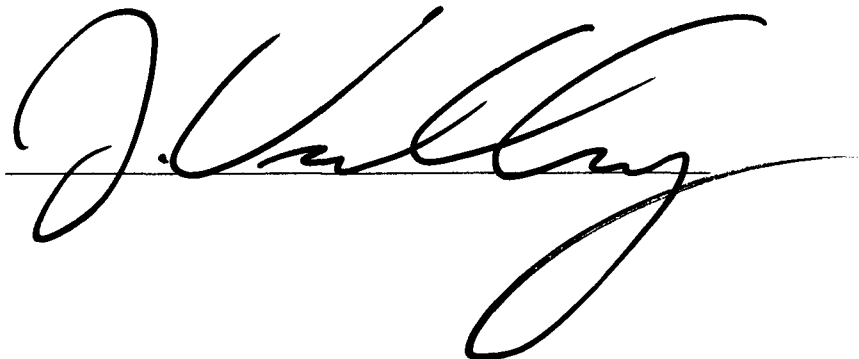
Temple Shalom of Matawan, N.J.  
c/o Kenneth Briller  
84 William St.  
New York, NY 10038

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  
5th day of September, 1980.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Temple Shalom of Matawan, N.J. :  
c/o Kenneth Briller : AFFIDAVIT OF MAILING  
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 12/1/76-2/28/77. :

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 5th day of September, 1980, he served the within notice of Decision by mail upon Kenneth Briller 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. Kenneth Briller  
84 William St.  
New York, NY 10038

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  
5th day of September, 1980.

Debbie Bank

[Signature]

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

September 5, 1980

Temple Shalom of Matawan, N.J.  
c/o Kenneth Briller  
84 William St.  
New York, NY 10038

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) 1139 & 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  
Kenneth Briller  
84 William St.  
New York, NY 10038  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
TEMPLE SHALOM OF MATAWAN N.J.	:	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 December 1, 1976	:	
through February 28, 1977.	:	

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Petitioner, Temple Shalom of Matawan, N.J. c/o Kenneth Briller, 84 William Street, New York, New York 10038, filed a petition 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 December 1, 1976 through February 28, 1977 (File No. 20356).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 26, 1980, at 2:45 P.M. Petitioner appeared by Kenneth Briller, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, an organization exempt from sales and use taxes, is entitled to a refund of sales tax paid by the Sisterhood of Temple Shalom, an auxiliary organization.

FINDINGS OF FACT

1. On July 1, 1977, petitioner, Temple Shalom of Matawan, N.J., filed an Application for Credit or Refund of State and Local Sales or Use Tax in the amount of \$333.15. The amount of the refund claim represented sales tax paid to the Nevele Hotel and Country Club by the Sisterhood of Temple Shalom. The application was filed based on petitioner's position that the Sisterhood is

entitled to the tax exempt status afforded the Temple Shalom as it is a part of the Temple and not a separate organization.

2. On August 1, 1977, the Audit Division denied petitioner's refund claim on the basis that the sales tax was paid by the Sisterhood rather than the Temple Shalom, the exempt organization of record.

3. On February 4, 1972, the Department of Taxation and Finance granted tax exempt status to petitioner, Temple Shalom of Matawan, under certificate number EX 136678.

4. Article XIII of the constitution and bylaws of petitioner authorized the formation of auxiliary organizations upon approval of the board of trustees. On December 3, 1963, such approval was given to the Sisterhood.

5. In January, 1977, the Sisterhood sponsored a fund raising event for Temple Shalom at the Nevele Hotel and Country Club. The Nevele issued an invoice for \$6,662.40 plus sales tax of \$333.15 to Sisterhood of Temple Shalom and payment thereof was made by check drawn on the account of the Sisterhood.

6. The Sisterhood has its own officers, constitution and bylaws, checkbook and other financial records. However, petitioner controlled and was responsible for the activities of the Sisterhood.

#### CONCLUSIONS OF LAW

A. That an Exempt Organization Certificate, which is issued by the Department of Taxation and Finance to a qualified organization, entitles only that organization to which it was issued to make tax exempt purchases. That such purchases must be billed to and paid for by the organization to which the exemption certificate was issued. That an auxiliary unit of an exempt organization may not make tax free purchases by using the exemption number issued to the exempt organization.

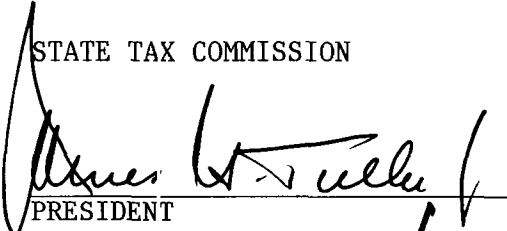
B. That in accordance with Finding of Fact "6", the Sisterhood of Temple Shalom is an auxiliary organization separate and apart from petitioner, Temple Shalom of Matawan N.J. and that since the sales tax at issue was paid by the Sisterhood, petitioner is not entitled to a refund thereof.

C. That the petition of Temple Shalom of Matawan N.J. is denied and the refund denial issued August 1, 1977 is sustained.

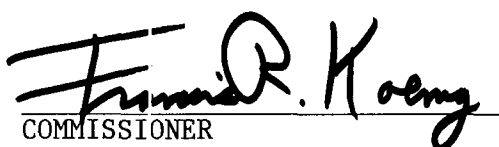
DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER