

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Typewriter Sales & Service of S.I., 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 9/1/72 - 8/31/75. :

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 17th day of October, 1980, he served the within notice of Decision by mail upon Typewriter Sales & Service of S.I., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Typewriter Sales & Service of S.I., Inc.  
252 Richmond Ave.  
Staten Island, NY 10314

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  
17th day of October, 1980.

*Lectoria A. Bank*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Typewriter Sales & Service of S.I., 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 9/1/72 - 8/31/75. :

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 17th day of October, 1980, he served the within notice of Decision by mail upon Gerald Saperstein 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. Gerald Saperstein  
954 Crestview Ave.  
Valley Stream, NY 11581

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  
17th day of October, 1980.

Dorothy A. Bank

J. Vredenburg

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

October 17, 1980

Typewriter Sales & Service of S.I., Inc.  
252 Richmond Ave.  
Staten Island, NY 10314

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) 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  
Gerald Saperstein  
954 Crestview Ave.  
Valley Stream, NY 11581  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
TYPEWRITER SALES AND SERVICE	:	DECISION
OF STATEN ISLAND, INC.	:	
	:	
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 September 1, 1972 through	:	
August 31, 1975.	:	

---

Petitioner, Typewriter Sales and Service of Staten Island, Inc., 252 Richmond Avenue, Staten Island, New York 10314, 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 September 1, 1972 through August 31, 1975 (File No. 14534).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 18, 1979 at 2:45 P.M. and continued on March 18, 1980 at 2:45 P.M. Petitioner appeared by Gerald Saperstein, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly held as taxable receipts a portion of exempt sales reported by petitioner.

II. Whether use tax is due on unidentified cash payments charged to office expense.

FINDINGS OF FACT

1. On April 14, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Typewriter Sales and

Service of Staten Island, Inc. for the period September 1, 1972 through August 31, 1975 in the amount of \$8,484.46 tax plus penalties and interest.

2. Petitioner executed a consent extending the period of limitation for assessment to September 20, 1976.

3. On audit, the Audit Division examined exempt sales made by petitioner for the month of April, 1975. It found that 29.3 percent of the exempt sales made were not substantiated by exemption certificates. Therefore, it disallowed 29.3 percent of the exempt sales reported by petitioner on its sales and use tax returns filed for the period in issue and determined tax due thereon of \$8,003.54.

The Audit Division examined expense purchases for the month of April, 1975 and found that \$40.00 per week was paid out in cash and charged to office expense. Since these purchases and another \$2.00 cash expenditure could not be identified, the Audit Division held them as purchases subject to use tax at \$162.00 per month and determined tax due thereon of \$430.92. No invoices were available to determine if the tax was paid on such items.

Tax due of \$50.00 on fixed assets purchased was also determined which is not at issue.

4. Petitioner produced exemption certificates for most of the exempt sales that were unsubstantiated on audit. The Audit Division reviewed the certificates and submitted a revision of the unsubstantiated exempt sales to 3.321 percent of the exempt sales reported and redetermined the tax due thereon to be \$971.68.

5. In addition, petitioner billed American Baptist Management Corporation for \$383.02 in sales during the test period on which no tax was charged. Petitioner submitted an exempt organization certificate from 141 Parkhill

Corporation, c/o American Baptist Management Corporation, Agent. The sales made were the property of 141 Parkhill Corporation which was assigned Certificate Number EX-143459 as shown on the certificate submitted to petitioner. Petitioner submitted a proposed adjustment of unsubstantiated exempt sales to 1.169 percent and tax due thereon of \$342.04 to show the result of this submission.

6. Petitioner contended that the cash expenditure of \$40.00 per week was for reimbursement of expenses incurred by an employee and were not taxable. Petitioner failed to submit vouchers or other substantiation of the expenditure.

7. Petitioner did not raise an issue regarding the application of penalties and interest.

#### CONCLUSIONS OF LAW

A. That the sales made by petitioner as noted in Finding of Fact "5" were to a corporation exempt under section 1116(a)(4) of the Tax Law; that the additional sales tax due on unsubstantiated exempt sales made by the petitioner is \$342.04 in conjunction with Finding of Fact "5".

B. That petitioner failed to show that the cash expenditures charged to office expense were for property or services that have already been subject to the sales tax or were otherwise exempt. That the Audit Division properly determined the use tax liability in accordance with sections 1110 and 1254 of the Tax Law in the absence of substantiating records.

C. That except as noted in Conclusion of Law "A" above, the audit performed was proper and in accordance with section 1138(a) of the Tax Law.

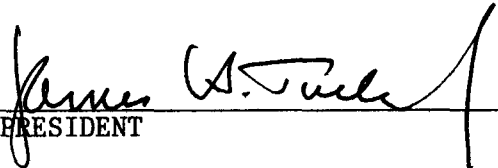
D. That the petition of Typewriter Sales and Service of Staten Island, Inc. is granted to the extent indicated in Conclusion of Law "A" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 14, 1976 with

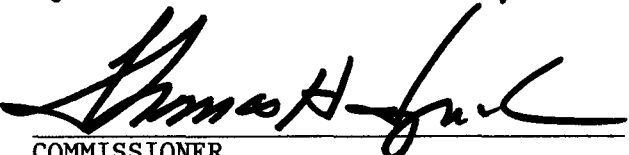
applicable penalties and interest thereon; and that, except as so granted, the petition is in all other respects denied.

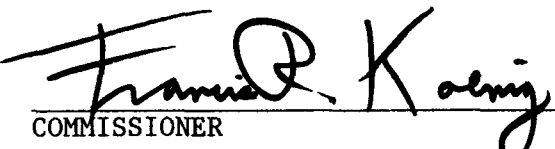
DATED: Albany, New York

STATE TAX COMMISSION

OCT 17 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER