

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Delmar Animal Hospital :
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 12/1/73 - 11/30/75. :

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 20th day of June, 1980, he served the within notice of Decision by mail upon Delmar Animal Hospital, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Delmar Animal Hospital
910 Delaware Ave.
Delmar, NY 12054

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
20th day of June, 1980.

Joanne Krapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Delmar Animal Hospital :
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 12/1/73 - 11/30/75. :

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 20th day of June, 1980, he served the within notice of Decision by mail upon John Cholakis 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. John Cholakis
90 State St.
Albany, NY 12207

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
20th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 20, 1980

Delmar Animal Hospital
910 Delaware Ave.
Delmar, NY 12054

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
John Cholakis
90 State St.
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DELMAR ANIMAL HOSPITAL : 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, 1973 through :
November 30, 1975. :

Petitioner, Delmar Animal Hospital, 910 Delaware Avenue, Delmar, New York 12054, 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, 1973 through November 30, 1975 (File No. 18451).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 27, 1979 at 10:00 A.M. Petitioner appeared by John M. Cholakis, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul LeFebvre, Esq., of counsel).

ISSUE

Whether petitioner is entitled to the credits claimed on its New York State and local sales and use tax returns for sales tax paid on drugs and medicines sold to farmers for use on food producing animals.

FINDINGS OF FACT

1. On March 18, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Delmar Animal Hospital for the period December 1, 1973 through November 30, 1975 in the amount of \$987.47 tax plus interest.

2. Petitioner protested the above Notice on March 22, 1977.

3. The Notice was issued as a result of the disallowance of credits claimed on sales and use tax returns filed by the petitioner for the periods at issue. It was the Audit Division's position that tangible personal property sold to a veterinarian is a retail sale and subject to the sales tax imposed under section 1105(a).

4. The petitioner contended the credits claimed on their sales tax returns were for sales taxes they paid on medicines at the time of purchase which were sold to farmers for use in treating food producing animals. Separate records were maintained by petitioner segregating dispensed medicines from those used in its veterinary service. Petitioner acknowledged that the credits were claimed at the selling price and should be reduced by 35 percent to reflect cost.

5. Petitioner felt that veterinarians should be afforded the same privileges of the resale exclusion afforded other distributors of the same products. Petitioner did not acquire exemption certificates for the sale of the medicines at issue.

CONCLUSIONS OF LAW

A. That section 1115(f) of the Tax Law states that tangible personal property designed for use in some manner relating to domestic animals and poultry when sold to a veterinarian shall not be deemed a sale for resale and shall not be exempt from the retail sales tax. Accordingly, the purchases of medicines by the petitioner are subject to the imposition of sales tax in accordance with the meaning and intent of section 1105(a) of the Tax Law.

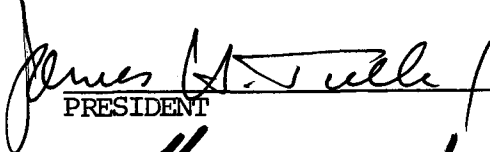
B. That prior to September 1, 1978, there was no provision under section 1119 to allow veterinarians to file for a credit or refund of sales tax paid on purchases of drugs or medicines sold to farmers for use on livestock or poultry.


C. That the petition of Delmar Animal Hospital is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 18, 1977 is sustained.

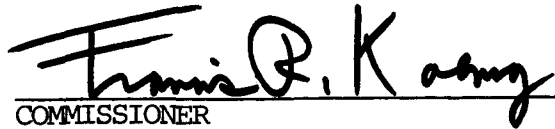
DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER