

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
The Estate of Frank J. Cilar :
d/b/a Electronic Discount :
: 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 :
Periods 6/1/70-11/30/75. :

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 5th day of June, 1981, he served the within notice of Decision by mail upon The Estate of Frank J. Cilar, d/b/a Electronic Discount, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Estate of Frank J. Cilar
d/b/a Electronic Discount
c/o Carlo M. Perfetto, Executor
605 Ridge Rd.
Lackawanna, NY 14218

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 June, 1981.

Cornie A. Hageland

J. Vredenburg

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

June 5, 1981

The Estate of Frank J. Cilar
d/b/a Electronic Discount
c/o Carlo M. Perfetto, Executor
605 Ridge Rd.
Lackawanna, NY 14218

To the Executor:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THE ESTATE OF FRANK J. CILAR	:	DECISION
D/B/A ELECTRONIC DISCOUNT	:	
	:	
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 June 1, 1970 through November 30,	:	
1975.	:	

Petitioner, The Estate of Frank J. Cilar d/b/a Electronic Discount, c/o Carlo M. Perfetto, Executor, 605 Ridge Road, Lackawanna, New York 14218, 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 June 1, 1970 through November 30, 1975 (File No. 14464).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on November 18, 1980 at 1:15 P.M. Petitioner appeared by Carlo M. Perfetto, Esq., Executor. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined additional sales taxes due based on an examination of petitioner's available books and records.

II. Whether the Audit Division timely issued an assessment of sales taxes for the period June 1, 1970 through November 30, 1975.

FINDINGS OF FACT

1. Petitioner, Frank J. Cilar d/b/a Electronic Discount, was engaged in the sales and service of televisions.

2. On March 10, 1976, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Frank Cilar d/b/a Electronic Discount for the period June 1, 1970 through November 30, 1975 for taxes due of \$22,628.99, plus penalty and interest of \$9,401.81, for a total of \$32,030.80.

3. On audit, the Audit Division examined sales invoices for 1974 and found that such sales were reported on sales tax returns filed for that year. The Division also verified that the reported nontaxable sales were correct. However, the auditor determined that gross sales reported on schedule C of Federal income tax returns filed for the years 1973, 1974 and 1975 exceeded the gross sales reported on sales tax returns filed for corresponding periods by \$192,191.00 or an underreporting factor of 248 percent. This percentage was used to determine unreported gross sales of \$158,222.00 for the period June 1, 1970 through November 30, 1972. Tax was asserted on the \$350,411.00 total unreported sales.

4. Petitioner argued that the excess gross sales reported on its Federal returns represented wholesale sales to other television dealers and rental income from an apartment building. However, petitioner did not introduce any documentary evidence to support this argument. Petitioner further argued that at the time the notice was issued, the period June 1, 1970 through November 30, 1972 was barred by the statute of limitations and that the periods thereafter are now also barred since the taxes were not finally or irrevocably fixed and there have been no further proceedings by the tax commission to recover such taxes.

5. The books and records made available to the Audit Division were insufficient to determine the exact amount of petitioner's taxable sales.

6. Petitioner failed to establish that reasonable cause exists for the abatement of penalty and interest.

CONCLUSIONS OF LAW

A. That since petitioner did not maintain adequate books and records, the Audit Division properly determined petitioner's gross sales from such information as was available, pursuant to section 1138(a) of the Tax Law. That petitioner failed to sustain the burden of proving that the additional gross sales determined by the Audit Division as set forth in Finding of Fact "3" were income from the rental of real estate or not taxable in accordance with the meaning and intent of section 1132(c) of the Tax Law.

B. That section 1147(b) of the Tax Law provides that except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return.

That petitioner timely filed and paid sales tax returns for the period at issue. Therefore, the notice referred to in Finding of Fact "2" issued March 10, 1976, is beyond the three year statute with respect to period June 1, 1970 through November 30, 1972, and thus the additional taxes determined for said period of \$9,175.62 are barred by the Sales Tax Law. However, for the period December 1, 1972 through November 30, 1975, the additional taxes were timely assessed by the Audit Division in accordance with the provisions of section 1147(b) of the Tax Law.

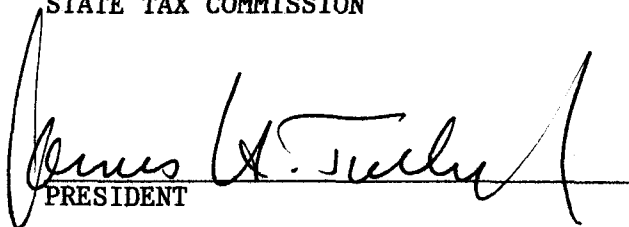
C. That the petition of The Estate of Frank J. Cilar d/b/a Electronic Discount is granted to the extent that the additional sales taxes due are reduced to \$13,453.37 so as to conform with Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and

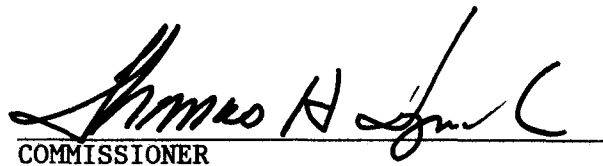
Demand for Payment of Sales and Use Taxes Due issued March 10, 1976; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER