

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Steven Farago

:

:

: 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 3/1/70 - 2/29/72.

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 19th day of June, 1981, he served the within notice of Decision by mail upon Steven Farago, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steven Farago
97-37 63rd Rd.
Rego Park, NY 11376

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
19th day of June, 1981.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Steven Farago :

: 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 3/1/70 - 2/29/72.

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 19th day of June, 1981, he served the within notice of Decision by mail upon Linda Bodner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Linda Bodner
Baratto & Goldstein
1250 Broadway
New York, NY

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
19th day of June, 1981.

Ann P. Hagelund

J. Vredenburg

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

June 19, 1981

Steven Farago
97-37 63rd Rd.
Rego Park, NY 11376

Dear Mr. Farago:

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
Linda Bodner
Baratto & Goldstein
1250 Broadway
New York, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STEVEN FARAGO	:	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 March 1, 1970 through February 29,	:	
1972.	:	

Petitioner, Steven Farago, 97-37 63rd Road, Rego Park, New York, 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 March 1, 1970 through February 29, 1972 (File No. 21038).

A formal hearing was held before Harvey Baum, Hearing Officer, on July 11, 1978 and continued to completion before Julius E. Braun, Hearing Officer, on December 12, 1978 at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Petitioner appeared by Linda Bodner, Esq. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Samuel Freund and Irving Atkins, Esqs., of counsel).

ISSUE

Whether petitioner was liable as a person required to collect tax under sections 1131(1) and 1133(a) of the Tax Law for sales tax owed by Program Sales Corp.

FINDINGS OF FACT

1. On November 20, 1974, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Steven Farago for the period March 1, 1970 through February 29, 1972 in the amount of \$83,730.69, plus interest of \$17,189.64, for a total of \$100,920.33. An earlier notice

was revised because consideration for bad debts was disallowed. The original notice was for \$40,125.87, plus interest of \$8,061.01, for a total of \$48,186.88.

2. Steven Farago was employed by Program Sales Corp. in late 1969 or early 1970 as a salesman. He was hired by Karen A. Diodato and Bruce Diodato, officers of the corporation. According to the affirmation by the New Jersey attorney who was the original and sole director, Steven Farago was a shareholder and an officer of the corporation. On March 17, 1971 he resigned his office and continued as salesman. He had no particular duties as an officer. He received a salary as salesman. According to the accountant, he signed corporate checks when available.

3. A field audit was completed upon Program Sales Corp. on October 19, 1972 for the period September 1, 1969 through July 31, 1972. Sales tax returns had been filed and payments were made for the quarters ending November 30, 1969, February 28, 1970 and May 31, 1972. Returns were filed for the other periods in issue on July 11, 1972 but no payments were made.

4. The U. S. Corporation Income Tax Return for Program Sales Corp. for the fiscal year ending September 30, 1970, listed Stanley Kanney as president, owning 50 percent of common stock and receiving no compensation. Petitioner Steven Farago was listed as vice-president owning 50 percent of the stock and receiving \$20,000.00 compensation. The U.S. Corporation Income Tax Return for the fiscal year ending September 30, 1971, indicated one Ronald Stechler as president and Steven Farago as vice-president both owning 45 percent of the stock. The field audit report for the period September 1, 1969 through July 31, 1972 lists Stanley Kanney, a former officer, as owning 10 percent of the stock. Checks on account No. 03999398, Garden State National Bank of Hackensack, New Jersey, of Program Sales Corp. dated July 24, 1970 were offered at the hearing. They were signed by Stanley Kanney and were payable to New York

Telephone Company in the amount of \$38.94, to Professional Exchange in the amount of \$55.00, and to Morse Electro Products in the amount of \$294.00. A First National City Bank, Jamaica, New York, signature card of Program Sales Corp. was offered at the hearing. The account was opened October 6, 1970 and closed March 8, 1972, by the bank as unsatisfactory. Steven Farago was listed vice president and Ronald Stechler, president. This account number was 2160-0363. A general resolution of Program Sales Corp. dated July 1, 1971, which was given to the bank in relation to account number 2160-0363, also named the same officers.

5. The audit, upon completion on October 19, 1972, was for the period of September 1, 1969 through July 31, 1972, beyond the period stated in the Notice of Determination and Demand for Payment of Sales and Use Taxes Due. The earlier Notice charged petitioner Steven Farago for tax due on total sales tax returns which were filed by Program Sales Corp. on July 11, 1972 without remittance. All sales tax returns during the period in issue were signed by the secretary, Karen Diodato. Total due on these returns amounted to \$40,125.87. The audit disallowed bad accounts. This resulted in another Notice to be issued which increased the amount due to \$83,730.69, plus interest of \$17,189.64, for a total of \$100,920.33.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law states in pertinent part:

..."[E]very person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article."

A definition of said "person" is found in section 1131 (subdivision 1) which states:

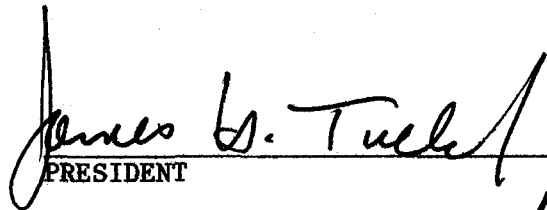
"'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include: ...any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article..."

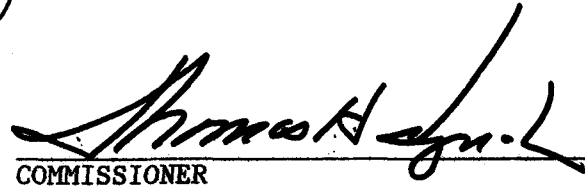
B. That Steven Farago was a person required to collect tax; therefore, the petition of Steven Farago is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on November 20, 1974 is sustained.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER

*I dissent -
Francis R. Koenig*