

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Max Goldberg & Anne Weiss :  
d/b/a Oxford Nursing Home :  
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 8/1/65 - 8/31/75. :

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 30th day of January, 1981, he served the within notice of Decision by mail upon Max Goldberg & Anne Weiss, d/b/a Oxford Nursing Home, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Max Goldberg & Anne Weiss  
d/b/a Oxford Nursing Home  
114 South Oxford Street  
Brooklyn, 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
30th day of January, 1981.

*Cornelia D. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Max Goldberg & Anne Weiss :  
d/b/a Oxford Nursing Home : 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 8/1/65 - 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 30th day of January, 1981, he served the within notice of Decision by mail upon Lawrence S. Karnbad 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. Lawrence S. Karnbad  
Zemlock, Levy & Bick  
225 Broadway  
New York, NY 10007

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  
30th day of January, 1981.

*Cornelia A. Hagelund*

*J. Vredenburg*

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

January 30, 1981

Max Goldberg & Anne Weiss  
d/b/a Oxford Nursing Home  
114 South Oxford Street  
Brooklyn, NY

Dear Mr. Goldberg & Ms. Weiss:

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  
Lawrence S. Karnbad  
Zemlock, Levy & Bick  
225 Broadway  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MAX GOLDBERG and ANNE WEISS	:	DECISION
D/B/A OXFORD NURSING HOME	:	
	:	
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 August 1, 1965 through August 31,	:	
1975.	:	

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Petitioners, Max Goldberg and Anne Weiss, d/b/a Oxford Nursing Home, 114 South Oxford Street, Brooklyn, 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 August 1, 1965 through August 31, 1975 (File No. 14876).

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 May 15, 1980 at 9:15 A.M. Petitioner Max Goldberg appeared by Lawrence S. Karnbad, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether the use tax due, applicable to New York City, on the rental of tangible personal property, as determined by the Audit Division, should be reduced by a purported overpayment of New York City commercial rent tax.

FINDINGS OF FACT

1. On January 20, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Max Goldberg and Anne Weiss d/b/a Oxford Nursing Home for the period August 1, 1965 through

August 31, 1975 in the amount of \$15,953.17 tax, plus penalties and interest. The Notice was issued as a result of an audit.

2. Petitioners filed no sales or use tax returns for the period in issue and were not registered for the purpose of collecting or reporting sales and use taxes.

3. Petitioners operated a nursing home and leased the real property including equipment and furniture.

4. Petitioners' books and records were unavailable for audit. The Audit Division based the tax due on a twenty-one year lease agreement between petitioners and their landlord. The lease agreement, commencing June 1, 1972, provided for an annual rental charge of \$25,000.00 for furniture and other personalty.

No lease agreement was available for periods prior to June 1, 1972. The Audit Division determined the amount of rental charges paid for the period June 1, 1971 through May 31, 1972 from a New York City commercial rent tax audit. The commercial rent tax audit revealed taxable rental charges of \$130,020.00 for this period. The Audit Division determined that rental charges for tangible personal property were 20 percent of the rent paid for that period. It used an annual rental charge of \$26,004.00 for tangible personal property for all periods prior to June 1, 1972. It determined total taxable rental charges of \$259,195.00 for the audit period and the tax due thereon of \$15,953.17.

5. Petitioner Max Goldberg acknowledged that a use tax was due on the lease of tangible personal property; however, he contended that New York City would be getting more than its share of tax since the rent tax audit included the rental value of the tangible personal property. Therefore, he argued that the use tax applicable to New York City should be reduced by the amount overpaid as commercial rent tax.

6. Petitioner Max Goldberg introduced an audit workpaper from a New York City rent tax audit covering the period June 1, 1971 through May 31, 1974 along with summaries of commercial rent tax deficiencies assessed for the period June 1, 1968 through May 31, 1977. The audit workpaper disclosed a reduction of 20 percent made to commercial rent tax determined due.

7. Petitioner Max Goldberg offered no evidence to show that the amount of rental attributable to tangible personal property as determined by the Audit Division for the periods prior to June 1, 1972 was incorrect.

8. Petitioner Max Goldberg did not raise an issue regarding the application of penalties and interest.

CONCLUSIONS OF LAW

A. That the audit performed by the Audit Division was proper and in accordance with the provisions of section 1138(a) of the Tax Law, that such additional tax due was properly determined from such information as was available. Moreover, no provision is made in the Tax Law for reduction of sales and use taxes by any overpayment of tax to another authority if such were, in fact, made.

B. That the petitions of Max Goldberg and Anne Weiss d/b/a Oxford Nursing Home are denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 20, 1976 is sustained together with penalties and interest at the maximum statutory rate.

DATED: Albany, New York

JAN 30 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER