

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
George Kane

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:  
9/1/73-2/28/76.

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 27th day of November, 1981, he served the within notice of Decision by certified mail upon George Kane, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Kane  
269-23K, Grand Central Pkwy.  
Floral Park, NY 11005

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  
27th day of November, 1981.

*Annex A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
George Kane :  
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 9/1/73 - 2/28/76. :

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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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Michael K. Benimowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

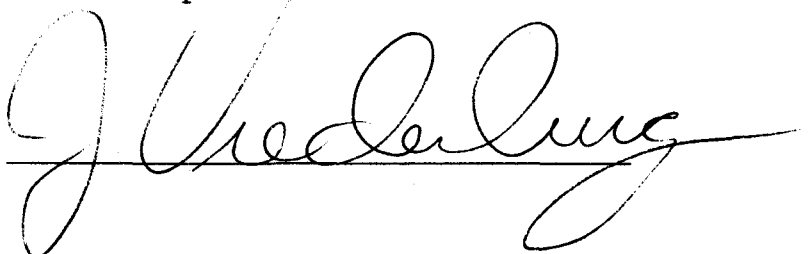
Michael K. Benimowitz  
299 Broadway  
New York, NY

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  
27th day of November, 1981.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Arthur Simon

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: 9/1/73-2/28/76.

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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Arthur Simon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur Simon  
35 Piper Dr.  
Searington, NY 11507

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  
27th day of November, 1981.

*Cornice G. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Arthur Simon :  
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 9/1/73-2/28/76.

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State of New York  
County of Albany

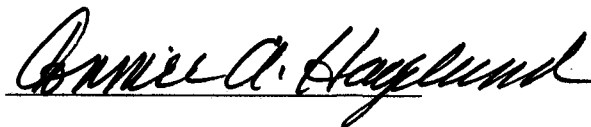
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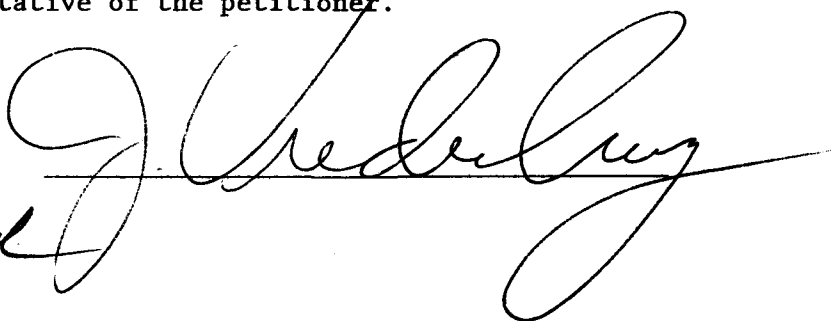
Michael K. Benimowitz  
29 Broadway  
New York, NY

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  
27th day of November, 1981.

  
James A. Haglund



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

November 27, 1981

George Kane  
269-23K, Grand Central Pkwy.  
Floral Park, NY 11005

Dear Mr. Kane:

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  
Michael K. Benimowitz  
299 Broadway  
New York, NY  
Taxing Bureau's Representative

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

November 27, 1981

Arthur Simon  
35 Piper Dr.  
Searington, NY 11507

Dear Mr. Simon:

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.

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Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Michael K. Benimowitz  
29 Broadway  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE KANE and ARTHUR SIMON	:	DECISION
Individually and As Officers	:	
of Jay Stevens Carpet Distributors, 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, 1973	:	
through February 28, 1976.	:	

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Petitioners, George Kane, 269-23K Grand Central Parkway, Floral Park, New York 11005, and Arthur Simon, 35 Piper Drive, Searington, New York 11507, were granted the right to a hearing by a stipulation, dated April 18, 1978, entered into in State Tax Commission v. Jay Stevens Carpet Distributors, Inc., et al, in the Supreme Court of the State of New York, Kings County (Index No. 16953/77), (File Nos. 28610 and 28611).

A formal hearing was held before Stanley Buchsbaum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 25, 1980 at 1:15 P.M. Petitioners George Kane and Arthur Simon appeared by Michael K. Benimowitz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUES

I. Whether Arthur Simon is individually liable for sales and use taxes due from Jay Stevens Carpet Distributors, Inc.

II. Whether George Kane is individually liable for sales and use taxes due from Jay Stevens Carpet Distributors, Inc.

FINDINGS OF FACT

1. George Kane was engaged in the carpet business under the name of Brooklyn Carpet Exchange in a building of about 20,000 square feet. The firm did not sell at retail, only on a wholesale basis.

2. Arthur Simon is Mr. Kane's son-in-law. For twelve years, he has worked for Brooklyn Carpet Exchange, and he is its secretary and treasurer.

3. In 1972 or 1973, Mike Schwartz and David Rosen approached Mr. Kane with regard to a business arrangement, asserting that they had a large following of decorators. This led to the creation of Jay Stevens Carpet Distributors, Inc. ("Stevens"). Mr. Kane invested \$5,000.00 or \$10,000.00 and received 50 percent of the stock of this new corporation. Mr. Schwartz and Mr. Rosen received 25 percent each. Mr. Schwartz and Mr. Rosen were to run the business of the corporation. Brooklyn Carpet Exchange was to be Stevens' sole supplier of carpets and was to provide it with office space and the right to use the showroom. The Stevens firm paid Brooklyn Carpet Exchange a percentage of its sales as rent and as payment for some labor performed for it by Brooklyn Carpet Exchange.

4. Pursuant to a stockholders' agreement, Mr. Kane became a vice-president and Mr. Simon became secretary-treasurer of Stevens. Mr. Schwartz was president and Mr. Rosen was a vice-president. Every check of Stevens had to be signed by two of the officers. Although the original bank resolution did not so provide, it was agreed that one of the signatories on each check would be Mr. Kane or Mr. Simon. On June 23, 1975, a new bank resolution required all checks to be signed by an officer and by Karl Kornberg, the accountant for both the Brooklyn Carpet Exchange and Stevens.



5. Karl Kornberg was the accountant for Brooklyn Carpet Exchange and was paid by said firm. He did the accounting for Stevens, but payment for this work was made by Brooklyn Carpet Exchange. He visited Stevens twice a month and, after completing his work for it, he reported what he had found to Mr. Kane. Mr. Kornberg was made a signatore of Stevens so that he could watch Mr. Kane's interest in that corporation.

6. Mr. Kane spent approximately five hours per week giving guidance and selling merchandise to Stevens. He drew neither salary nor expenses from Stevens. He did not sign any tax returns for Stevens, including sales tax or Federal tax returns. Mr. Kane set up the corporate organization of Stevens. He could not direct action by Stevens alone. Unanimous agreement was required.

7. Mr. Simon was made an officer of Stevens so that he could watch Mr. Kane's cash flow and investment in that corporation and sign checks issued by it when Mr. Kane was not available. He was not an employee of Stevens. The only salary he drew was from Brooklyn Carpet Exchange. He provided no capital for that firm. He reported to Mr. Kane concerning what went on at meetings of the Stevens officers and with respect to expense checks which might be regarded as exorbitant. He exercised no control over Stevens. He never ordered merchandise for it or determined which of its bills should be paid. The only tax form he ever signed for Stevens was in 1975 when he signed a consent because Mr. Schwartz refused to come in and Mr. Rosen was seriously ill. In doing this, he acted on the advice of Mr. Kornberg. He attended officers' meetings of Stevens when Mr. Kane was not available and he signed checks for Stevens.

8. Mr. Kornberg, who was the accountant for Brooklyn Carpet Exchange, was paid by that firm to act as accountant for Stevens. He prepared Stevens' sales tax returns on the basis of the books kept by its bookkeepers. He negotiated

the consent agreement with the sales tax representatives. Mr. Simon was present only because the auditors asked for someone from the corporation to sign it.

9. The consent agreement was signed on December 1, 1975, and fixed the amount of sales and use taxes due for the period September 1, 1973 through August 31, 1975 at \$4,395.13.

10. Earlier, on June 24, 1975, Mr. Kane resigned as an officer of Stevens. About that time, Stevens left its place of business in the Brooklyn Carpet Exchange building and ceased doing business.

11. On August 17, 1976, a Notice and Demand for Payment was issued for Mr. Kane for the period ending November, 1975, for tax in the amount of \$2,018.42 and penalties/interest of \$403.90, for a total of \$2,422.32. On the same date, a similar Notice was issued for Mr. Kane for the period ending February, 1976, for tax in the amount of \$17,415.58 and penalties/interest of \$1,939.55, for a total of \$19,355.15.

12. On January 19, 1976, a Notice and Demand for Payment was issued for Mr. Kane and Mr. Simon based on the consent agreement. It started with the three-month period ending November 30, 1973, and ran through the three-month period ending on August 31, 1975. It called for payment of tax in the amount of \$4,395.13 and penalty/interest of \$1,074.24, for a total of \$5,469.37.

13. After warrants were issued against Mr. Kane and Mr. Simon based on the notices and demands for payment described in Paragraphs 11 and 12, they brought an action in the New York Supreme Court to vacate the warrants and to grant them a hearing. The hearing held herein is pursuant to a stipulation entered into in that proceeding.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides, in part, that "every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected". Section 1131(1) defines "Persons required to collect tax" as including any officer or employee who is under a duty to act for a corporation in complying with the Sales and Use Tax Law.

B. That George Kane was a person required to collect tax on behalf of Jay Stevens Carpet Distributors, Inc. up until his resignation as an officer from said firm on June 24, 1975.

C. That Arthur Simon was not a person required to collect tax on behalf of Jay Stevens Carpet Distributors, Inc.

D. That the petition of Arthur Simon is granted; and that all notices of determination and demand for payment of sales and use taxes due issued against him and all warrants issued against him based on the sales and use tax liabilities of Jay Stevens Carpet Distributors, Inc., are cancelled.

E. That the penalty is cancelled and interest is reduced to the minimum statutory rate.

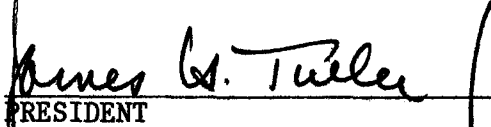
F. That the petition of George Kane is granted to the extent indicated in Conclusions of Law "B" and "E" above. The Audit Division is hereby directed to accordingly modify the Notice and Demand for Payment of Sales and Use Taxes Due issued against George Kane on January 19, 1976. The two notices and demand

issued against George Kane on August 17, 1976 are cancelled. Except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)  
 STATE OF NEW YORK  
 State Tax Commission  
 TAX APPEALS BUREAU  
 STATE CAMPUS  
 ALBANY, N. Y. 12227

CLAIM CHECK

11-30-81  
 DATE  
 11-30-81  
 1ST  
 AND NOTICE

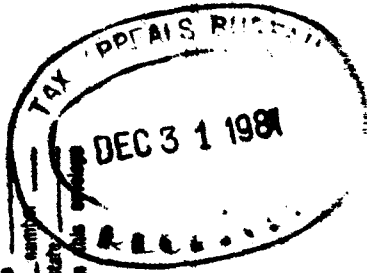
RETURN

~~Arthur Simon~~  
~~35 Piper Dr.~~  
~~Searington, NY 11507~~



REASON CHECKED

Declined ☒ Refused ☐  
 Addressee unknown  
 Insufficient Address  
 No such street number  
 No such office in state  
 No net mail in this office



UNCLAIMED

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

November 27, 1981

Arthur Simon  
35 Piper Dr.  
Searington, NY 11507

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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  
Michael K. Benimowitz  
29 Broadway  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
GEORGE KANE and ARTHUR SIMON  
Individually and As Officers  
of Jay Stevens Carpet Distributors, Inc.  
for Revision of a Determination or for Refund  
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of the Tax Law for the Period September 1, 1973  
through February 28, 1976.

DECISION

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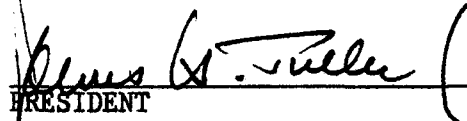
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DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER