

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
Stanley Kanney

:

:

: 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 Stanley Kanney, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley Kanney  
101 Harper Lane  
New Rochelle, 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  
19th day of June, 1981.

*Bernie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Stanley Kanney :

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for Redetermination of a Deficiency or a Revision :  
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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 19th day of June, 1981, he served the within notice of Decision by mail upon Daniel E. Laitman 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. Daniel E. Laitman  
Gleason, Laitman & Mathews  
One State St. Plaza  
New York, NY 10004

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.

*James A. Hagelund*

*J. Vredenburg*

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

June 19, 1981

Stanley Kanney  
101 Harper Lane  
New Rochelle, NY

Dear Mr. Kanney:

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  
Daniel E. Laitman  
Gleason, Laitman & Mathews  
One State St. Plaza  
New York, NY 10004  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
STANLEY KANNEY	:	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.	:	

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Petitioner, Stanley Kanney, 101 Harper Lane, New Rochelle, 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. 21039).

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 Daniel Laitman, 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 Stanley Kanney 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. Stanley Kanney was employed by Budget Enterprises Corp. ("Budget"), a finance company, during the period in issue. Budget purchased installment contracts from approximately 15 vendors. These vendors were in the furniture, clothing and electronics businesses. The customers totalled around 20,000. Program Sales Corp. was engaged in selling household furniture at retail and was located in Jersey City, New Jersey, and Jamaica, New York. Program Sales Corp., a New Jersey corporation, was a retail vendor which sold its retail customer contracts to Budget. On February 28, 1972, Program Sales Corp. filed a petition for bankruptcy. Budget was one of its largest creditors. Program Sales Corp. owed Budget approximately two or three hundred thousand dollars. Budget went out of business due to lack of capital when Program Sales Corp. failed.

3. A field audit upon Program Sales Corp. was completed on October 19, 1972 for the period September 1, 1969 through July 31, 1972. Sales tax returns had been filed and payments 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 of Program Sales Corp. for the fiscal year ending September 30, 1970, listed petitioner Stanley Kanney as president, owning 50 percent of common stock and receiving no compensation. Steve 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 of Program Sales Corp. for the fiscal year ending September 30, 1971, indicated

one Ronald Stechler as president and Steve 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 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. offered at the hearing, listed Steve Farago, Vice President and Ronald Stechler, President. This account was opened October 6, 1970 and closed March 8, 1972, as unsatisfactory. The number of this account 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 Stanley Kanney for tax due on total sales tax returns which were filed by Program Sales Corp. on July 11, 1972 without any 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.

6. Petitioner Stanley Kanney assumed that checks he signed were for convenience of Program Sales Corp.

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:

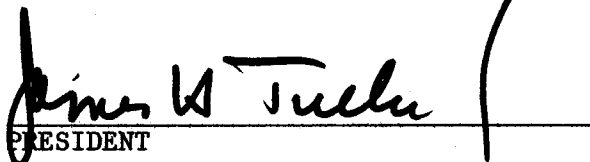
"'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include: ...any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of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

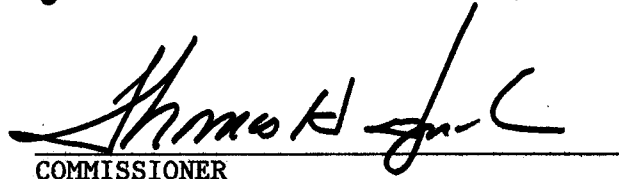
B. That Stanley Kanney was a person required to collect tax; therefore, the petition of Stanley Kanney is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on November 20, 1974 is sustained.

DATED: Albany, New York

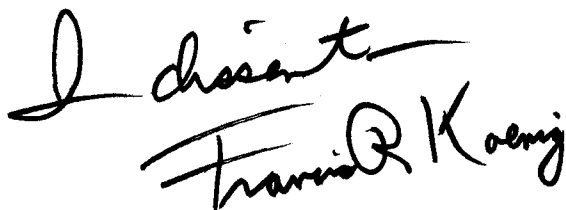
STATE TAX COMMISSION

JUN 19 1981

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER

  
Thomas R. Koehn

August 4, 1981

Anthony J. Genovesi, Esq.  
26 Court Street  
Brooklyn, New York 11242

Re: Stanley M. Kanney

Dear Mr. Genovesi:

Your letter of July 24, 1981 to Commissioner Ted Diamond has been forwarded to me for a reply.

The decision of the State Tax Commission in the above entitled matter represents an exhaustion of your administrative remedies. The decision was reached only after due and deliberate consideration by the Commission. It has been the long-standing policy of the Commission not to reconsider decisions in such cases once they have been issued.

The only relief available to you at this time is to institute an Article 78 Proceeding within four months from the date of the decision in Supreme Court, Albany County.

If I can be of any further service to you in this matter, please feel free to contact me.

Sincerely,

PAUL B. COBURN  
Secretary to the  
State Tax Commission

PBC/par

bcc: Mr. Ted Diamond

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Memorandum

July 27, 1981

To: Mr. Paul Coburn, Secretary, State Tax Commission  
From: Ted Diamond, Metropolitan Deputy Commissioner **TD**  
Subject: Stanley Kanney, Sales Tax Case; Decision of 6/19/81;  
Attached Letter

This attorney spoke to me about this case, which involves a very large sales tax liability and deals with whether ~~he~~ **Kanney** was a responsible party.

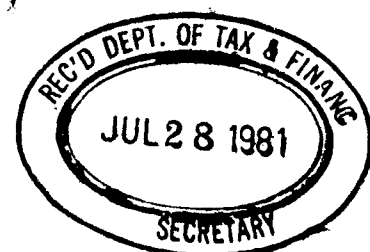
He advised that he has been asked to file an Article 78, that this may have been a split decision by the Tax Commission, that he had been through the record, memoranda and decision; and said that he was so sure that the decision was inappropriate, that he wondered if there was some major point he had missed.

That is surely an interesting approach and I asked him to write. I am forwarding a copy of his letter, but not the other enclosures because you must have them all (and more) in the file.

It seems unlikely to me that there was any significant, or even insignificant, legal or evidentiary point that was not adequately discussed by Tax Appeals Bureau or the Tax Commission, or that there was any point about which he was unaware.

In any event, please look at this letter and confirm this, so I can prepare an appropriate reply. If you desire, please prepare a draft reply for my signature, or reply directly if that seems advisable. In addition, please send me a copy of the Tax Commission's decision of 6/19/81.

TD/mb  
Attachment



ANTHONY J. GENOVESI  
COUNSELLOR

26 COURT STREET  
BROOKLYN, NEW YORK 11242  
212 852-4402

BY HAND

July 24, 1981

Hon. Ted Diamond  
New York State Tax Commission  
2 World Trade Center, Room 6615  
New York, New York 10047

Re: Stanley M. Kanney

Dear Commissioner:

I have been retained by Stanley M. Kanney to represent him in bringing an Article 78 proceeding, or seeking other relief, to review the decision of the State Tax Commission, rendered on June 19, 1981, which found that Mr. Kanney was an officer of Programs Sales Corporation responsible for the collection of said corporation's sales taxes for various periods.

After reviewing the transcript of the hearing, the documentary evidence introduced therein, the post-hearing memorandum of law submitted on behalf of Mr. Kanney and other documents in the file, I find no basis for the Commission's determination. On the one hand, no credible evidence was presented that Kanney was an officer of this corporation. On the other hand, the testimony of independent witnesses and an examination of documents created by this corporation in the ordinary course of business and filed with various state agencies in New York and New Jersey, with the Federal Bankruptcy court and with its own bank, overwhelming proves that Mr. Kanney was neither an officer of the corporation nor a "person responsible for the collection of tax" under Section 1133(a).

I have enclosed herewith a brief summary of the relevant facts and law, including copies of exhibits and pages of the hearing transcript which support Mr. Kanney's position that he was not an officer of the corporation or a person responsible for the collection of said corporation's taxes. For your convenience, I have also enclosed a copy of the post-hearing hearing memorandum of law submitted on behalf of Mr. Kanney.

ANTHONY J. GENOVESI

Hon. Ted Diamond  
July 24, 1981  
Page 2

In light of the above, it is respectfully requested  
that the Commission's determination be reviewed and  
reconsidered.

Thank you for your courtesies.

Very truly yours,

*Anthony J. Genovesi*

Anthony J. Genovesi