

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Konat Service Center :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales Tax under :
Article 28 & 29 of the Tax Law for the Period :
6/1/71 - 5/31/74. :

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Konat Service Center, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Konat Service Center
453 Coney Island Ave.
Brooklyn, NY 11218

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
21st day of August, 1981.

Annie A. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Konat Service Center :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales Tax under :
Article 28 & 29 of the Tax Law for the Period :
6/1/71 - 5/31/74. :

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Lester E. Levin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lester E. Levin
Rifkin, Levin & Lebowitz
501 Fifth Ave.
New York, NY 10017

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
21st day of August, 1981.

Annie A. Hogeland

J. Vredenburg

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

August 21, 1981

Konat Service Center
453 Coney Island Ave.
Brooklyn, NY 11218

Gentlemen:

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
Lester E. Levin
Rifkin, Levin & Lebowitz
501 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Konat Service Center :
: AFFIDAVIT OF MAILING
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of a Determination or a Refund of Sales Tax under :
Article 28 & 29 of the Tax Law for the Period :
6/1/71 - 5/31/74. :

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 14th day of August, 1981, he served the within notice of Decision by mail upon Konat Service Center, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Konat Service Center
453 Coney Island Ave.
Brooklyn, NY 11218

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
14th day of August, 1981.

Annice A. Hagellund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Konat Service Center :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales Tax under :
Article 28 & 29 of the Tax Law for the Period :
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State of New York
County of Albany

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Rifkin, Levin & Lebowitz
501 Fifth Ave.
New York, NY 10017

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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
14th day of August, 1981.

Carrie A. Haglund

J. Vredenburg

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

August 14, 1981

Konat Service Center
453 Coney Island Ave.
Brooklyn, NY 11218

Gentlemen:

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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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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
Lester E. Levin
Rifkin, Levin & Lebowitz
501 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KONAT SERVICE CORP.	:	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 June 1, 1971	:	
through May 31, 1974.	:	

Petitioner, Konat Service Corp., 453 Coney Island Avenue, Brooklyn, New York 11218, 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, 1971 through May 31, 1974 (File No. 14588).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 8, 1979 at 9:15 A.M. Petitioner appeared by Lester E. Levin, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales and use taxes due from petitioner for the period June 1, 1971 through May 31, 1974.

FINDINGS OF FACT

1. Petitioner, Konat Service Corp., was a plumbing contractor engaged in capital improvement and repair work.
2. On March 5, 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 petitioner for the period June 1, 1971 through May 31, 1974 for taxes

due of \$23,893.30, plus penalty and interest of \$10,552.90, for a total of \$34,446.20.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period June 1, 1971 through May 31, 1974, to December 20, 1976.

4. On audit, the Audit Division analyzed sales invoices for the months of October 1973 and April 1974 and determined that 13.6 percent of gross sales was repairs and the remaining 86.4 percent represented capital improvement work. The Division was unable to reconcile the results of the test periods with petitioner's books and records because of numerous bookkeeping errors and duplicate invoices. Purchase invoices were examined for the month of December 1973 which revealed that petitioner failed to pay a sales or use tax on 6.62 percent of materials used in capital improvements. The Audit Division also reviewed expense purchases for April 1974 and May 1974 which disclosed that no tax was paid on purchases charged to an account entitled "cleaning" and that petitioner failed to pay tax on 5.65 percent of the purchases in the "supply and maintenance" account. Based on the foregoing findings, the Audit Division determined petitioner's sales and use tax liability as follows:

gross sales	\$2,962,274.62
repair sales 13.6%	402,869.35
less: reported repair sales	118,188.00
additional taxable repair sales	\$ 284,681.35
additional sales tax due	19,927.67
 total purchases	 \$ 907,011.21
capital improvement materials 86.4%	783,657.69
additional taxable purchases 6.62%	51,878.14
total supply and maintenance purchases	14,946.88
taxable purchases 5.65%	844.48
taxable cleaning purchases	3,928.99
total additional taxable purchases	56,651.88
use tax due	3,965.63

5. Petitioner conceded that the use taxes as determined above were correct. However, petitioner argued that taxable repair sales were accurately reported on its sales tax returns filed for the period at issue.

6. Petitioner's record keeping was insufficient to the extent indicated in Finding of Fact "4" and therefore, the Audit Division was unable to verify reported taxable sales.

7. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That in view of petitioner's inadequate sales records, the Audit Division properly determined petitioner's taxable repair sales and taxes due thereon from such information as was available as authorized in section 1138(a) of the Tax Law.

B. That the penalty is abated and interest shall be computed at the minimum statutory rate.

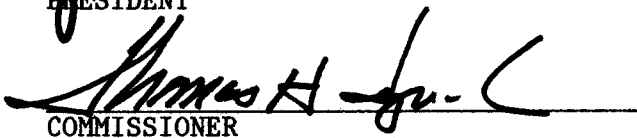
C. That the petition of Konat Service Corp. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 5, 1976 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

August 21, 1981

Konat Service Center
453 Coney Island Ave.
Brooklyn, NY 11218

Gentlemen:

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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
Lester E. Levin
Rifkin, Levin & Lebowitz
501 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KONAT SERVICE CORP.	:	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 June 1, 1971	:	
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Petitioner, Konat Service Corp., 453 Coney Island Avenue, Brooklyn, New York 11218, 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, 1971 through May 31, 1974 (File No. 14588).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 8, 1979 at 9:15 A.M. Petitioner appeared by Lester E. Levin, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

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FINDINGS OF FACT

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3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period June 1, 1971 through May 31, 1974, to December 20, 1976.

4. On audit, the Audit Division analyzed sales invoices for the months of October 1973 and April 1974 and determined that 13.6 percent of gross sales was repairs and the remaining 86.4 percent represented capital improvement work. The Division was unable to reconcile the results of the test periods with petitioner's books and records because of numerous bookkeeping errors and duplicate invoices. Purchase invoices were examined for the month of December 1973 which revealed that petitioner failed to pay a sales or use tax on 6.62 percent of materials used in capital improvements. The Audit Division also reviewed expense purchases for April 1974 and May 1974 which disclosed that no tax was paid on purchases charged to an account entitled "cleaning" and that petitioner failed to pay tax on 5.65 percent of the purchases in the "supply and maintenance" account. Based on the foregoing findings, the Audit Division determined petitioner's sales and use tax liability as follows:

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5. Petitioner conceded that the use taxes as determined above were correct. However, petitioner argued that taxable repair sales were accurately reported on its sales tax returns filed for the period at issue.

6. Petitioner's record keeping was insufficient to the extent indicated in Finding of Fact "4" and therefore, the Audit Division was unable to verify reported taxable sales.

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CONCLUSIONS OF LAW

A. That in view of petitioner's inadequate sales records, the Audit Division properly determined petitioner's taxable repair sales and taxes due thereon from such information as was available as authorized in section 1138(a) of the Tax Law.

B., That the penalty is abated and interest shall be computed at the minimum statutory rate.

C. That the petition of Konat Service Corp. is granted to the extent indicated in 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 5, 1976 and that, except as so granted, the petition is in all other respects denied.

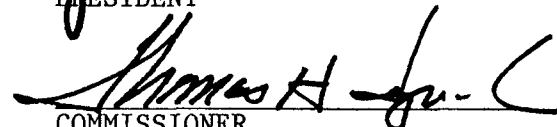
DATED: Albany, New York

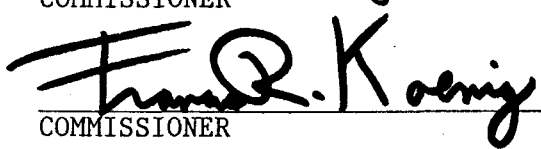
~~AUG 14 1981~~

AUG 21 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

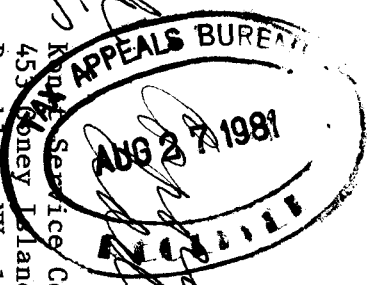
STATE CAMPUS

ALBANY, N. Y. 12227

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Handwritten: No public Auditor

Knowledge Service Center
453 Conney Island Ave.
Brooklyn, NY 11218



Handwritten: Carter

CERTIFIED

890 8016392

MAIL

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

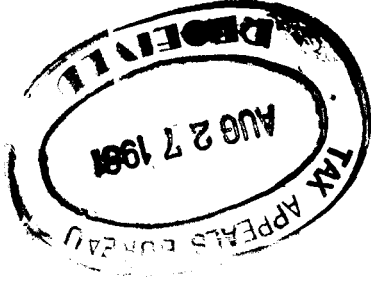
STATE CAMPUS

ALBANY, N. Y. 12227

NO Corporation

Konat Service Center
453 Coney Island Ave.
Brooklyn, NY 11218

the address



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

August 14, 1981

Konat Service Center
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Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
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Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
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DECISION

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B. That the penalty is abated and interest shall be computed at the minimum statutory rate.

C. That the petition of Konat Service Corp. is granted to the extent indicated in 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 5, 1976 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER