

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
Abraham Kremer

:

:

: 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:  
6/1/75 - 5/31/76.

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

Abraham Kremer  
98-41 64th Rd.  
Rego Park, NY 11374

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.

*Ann R. Hagelund*

*J. Vredenburg*

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

August 14, 1981

Abraham Kremer  
98-41 64th Rd.  
Rego Park, NY 11374

Dear Mr. Kremer:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
ABRAHAM KREMER	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Tax under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 1975	:	
through May 31, 1976.	:	

---

Petitioner, Abraham Kremer d/b/a Abe's Service Station, 98-41 64th Road, Rego Park, Queens, New York, filed a petition for revision of a determination or for refund of sales and use tax due under Articles 28 and 29 of the Tax Law for the period June 1, 1975 through May 31, 1976 (File No. 20417).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 21, 1980 and January 8, 1981. The petitioner appeared pro se. The Audit Division appeared at the October 21, 1980 session by Ralph J. Vecchio (Samuel J. Freund, Esq., of counsel) and at the January 8, 1981 session by Ralph J. Vecchio (Michael Gitter and Andrew Haber, Esqs., of counsel).

ISSUE

Whether petitioner is responsible as the agent of his employer under section 1101(b)(8)(ii) of the Tax Law for sales tax on gasoline and fuel oil sold at a certain gasoline station.

FINDINGS OF FACT

1. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on August 16, 1976 in the name of Abraham Kremer d/b/a Abe's Service Station at the address of 587 Kings Highway, Brooklyn, New York.

This was for the period June 1, 1975 through May 31, 1976 and is in the amount of \$27,940.32, plus penalty and interest of \$4,749.86, for a total of \$32,690.18.

2. Mr. Kremer immigrated to the United States from Israel in 1970. He operated a junk yard in Queens for two years. Mr. Kremer then met two men, Joe Skolnik and Bernie Schwartz, who offered him a job with the understanding that they would have much better jobs available for him at a later time. Accordingly, Mr. Kremer then operated a Texaco gasoline station on Flushing Avenue in Brooklyn owned by Capital Auto Parts of which the principle officers were Skolnik and Schwartz. He was told he would be employed as an auto parts salesman, but after two weeks on that job he was asked by Mr. Schwartz to operate another gas station owned by Capital at 587 Kings Highway.

3. Capital Auto Parts has been known to have had two addresses: one address is 11-27 Flushing Avenue, Brooklyn, a site of a Mobil Service Station. The other address is 139-20 Jamaica Avenue, Jamaica, New York, which is vacant but which has a sign with the name "Capital". A neighbor said Capital had been there only a few months.

4. Mr. Kremer commenced working at the Texaco gasoline station at 587 Kings Highway in June, 1975. He was to be paid 5¢ a gallon of gas sold. He worked at this station 5 or 6 hours each day. His wife, who was otherwise unemployed, would join him sometimes for an hour or so a day. The premises of the station was also occupied by an auto repair shop operated under the trade name of "Great Bear". Mr. Kremer had nothing to do with the auto repair business.

5. Deliveries of gasoline would be made to the gas station in Texaco trucks. Mr. Kremer would pay for a delivery by a money order made out to cash as he had been told to do by Mr. Schwartz. Mr. Kremer never himself ordered

gas. Sometimes the gas was already paid for before it was delivered. Mr. Skolnik came around every day or two to collect the station's receipts.

6. Mr. Kremer was told by Mr. Schwartz to register for the New York sales tax in his own name. He did so.

7. Sales tax returns were filed for the periods ending November 30, 1975 and February 28, 1976, bearing pre-printed labels in the name of Abe's Service Station at 587 Kings Highway, Brooklyn, New York. Each return showed gross sales and taxable sales in the same amount of \$5,499.00 and sales tax in the amount of \$440.00. The first return was prepared by an accountant and Mr. Kremer was told to prepare and sign identical returns for subsequent periods. Those were signed by Mr. Kremer.

8. a. The determination of tax due is based upon a finding that taxable sales amounted to \$360,254.00, an increase of \$349,256.00 over the \$10,998 as reported on sales tax returns. These audited taxable sales are composed of sales of automotive oil purchased at a cost of \$8,952.00 and marked up 100 percent for sales of \$17,904.00 and gasoline purchased at \$310,756.00 and marked up 25 percent for sales of \$388,445.00 against which a credit for state gasoline tax was allowed of \$46,095.00, resulting in net sales of \$342,350.00.

8. b. The auditor found that purchases from a company called "Alco Petroleum" averaged 25,875 gallons a month at an average cost of 54.15¢ a gallon. This multiplied by 12 for the 12 month audit period results in sales of 310,500 gallons, for a total cost of \$168,136.00. The only evidence in the record to show this are invoices from Texaco to Alco Petroleum.

8. c. The Auditor found that purchases of gasoline were made for cash from Kings County Fuel Oil Transportation Company. These purchases totaled 66,422 gallons for the three month period June, July and August of 1975. At an

average cost of 53.68¢ per gallon multiplied by four for the 12 month audit period, this results in sales of 265,688 gallons for \$142,620.00.

8. d. The auditor found that there were five purchases of oil between September 30, 1975 and January 26, 1976, totaling \$149.20. This was multiplied by 20 to arrive at a figure of \$2,984.00 said to represent the oil purchases of the four month period. (This multiple of 20 was applied because the auditor assumed that oil sales were underreported in the same ratio as gasoline sales and gasoline sales as reported were one-twentieth of gasoline sales as audited.) This result was multiplied by 3 to arrive at \$8,951.00 as the amount of oil purchases for the one-year audit period. Four of the oil purchases were from Tom's Auto Parts of 372 Avenue "V", Brooklyn, New York, and one was from Texaco at 1 North 17th Street, Brooklyn, New York.

9. Mr. Kremer denied any knowledge of deliveries of gasoline from Kings County Fuel Oil Transportation or from Alco Petroleum.

10. In May, 1976, Mr. Kremer left the Kings Highway gasoline station and operated a gasoline station owned by Capital in Great Neck, New York, for about one month until June, 1976. He now drives a taxi in New York.

#### CONCLUSIONS OF LAW

A. On this record, it is abundantly clear that the owner of the gasoline station being audited was Capital Auto Parts and not Mr. Kremer. It is further clear on this record that the person liable for the taxes of that corporation are Mr. Skolnik and Mr. Schwartz and not Mr. Kremer. Certainly Capital, Skolnik and Schwartz cannot be exculpated from their own liability for the taxes in issue. While the commission has the discretion by reason of section 1101(b)(8)(ii) of the Tax Law to tax Mr. Kremer as a vendor jointly responsible for the sales taxes in question with his employer, the Commission chooses not

to do so in this instance. It appears that Mr. Kremer himself was much more a victim rather than a participant in the circumstances created by Mr. Skolnik and Mr. Schwartz. Mr. Kremer did not himself profit from these circumstances.

B. The petition of Abraham Kremer is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 16, 1976 is cancelled.

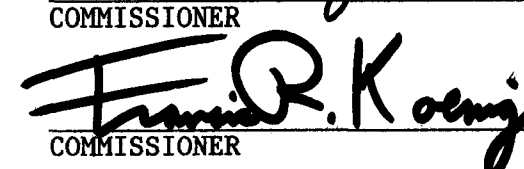
DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

  
PRESIDENT

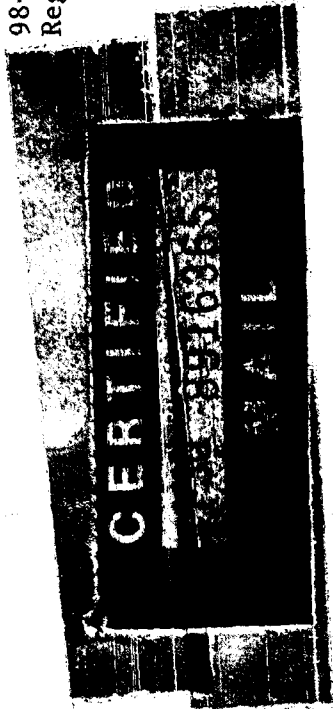
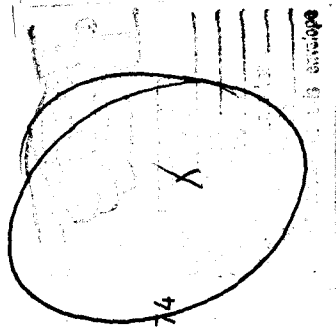
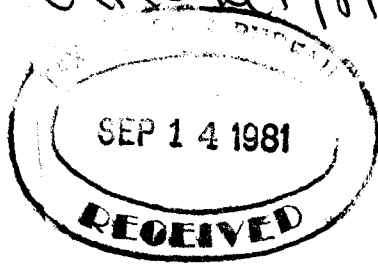
  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

Abraham Kremer  
98-41 64th Rd.  
Reno Park, NY 11374



Unclaimed





22

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

August 14, 1981

Abraham Kremer  
98-41 64th Rd.  
Rego Park, NY 11374

Dear Mr. Kremer:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
ABRAHAM KREMER	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Tax under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 1975	:	
through May 31, 1976.	:	

---

Petitioner, Abraham Kremer d/b/a Abe's Service Station, 98-41 64th Road, Rego Park, Queens, New York, filed a petition for revision of a determination or for refund of sales and use tax due under Articles 28 and 29 of the Tax Law for the period June 1, 1975 through May 31, 1976 (File No. 20417).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 21, 1980 and January 8, 1981. The petitioner appeared pro se. The Audit Division appeared at the October 21, 1980 session by Ralph J. Vecchio (Samuel J. Freund, Esq., of counsel) and at the January 8, 1981 session by Ralph J. Vecchio (Michael Gitter and Andrew Haber, Esqs., of counsel).

ISSUE

Whether petitioner is responsible as the agent of his employer under section 1101(b)(8)(ii) of the Tax Law for sales tax on gasoline and fuel oil sold at a certain gasoline station.

FINDINGS OF FACT

1. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on August 16, 1976 in the name of Abraham Kremer d/b/a Abe's Service Station at the address of 587 Kings Highway, Brooklyn, New York.

This was for the period June 1, 1975 through May 31, 1976 and is in the amount of \$27,940.32, plus penalty and interest of \$4,749.86, for a total of \$32,690.18.

2. Mr. Kremer immigrated to the United States from Israel in 1970. He operated a junk yard in Queens for two years. Mr. Kremer then met two men, Joe Skolnik and Bernie Schwartz, who offered him a job with the understanding that they would have much better jobs available for him at a later time. Accordingly, Mr. Kremer then operated a Texaco gasoline station on Flushing Avenue in Brooklyn owned by Capital Auto Parts of which the principle officers were Skolnik and Schwartz. He was told he would be employed as an auto parts salesman, but after two weeks on that job he was asked by Mr. Schwartz to operate another gas station owned by Capital at 587 Kings Highway.

3. Capital Auto Parts has been known to have had two addresses: one address is 11-27 Flushing Avenue, Brooklyn, a site of a Mobil Service Station. The other address is 139-20 Jamaica Avenue, Jamaica, New York, which is vacant but which has a sign with the name "Capital". A neighbor said Capital had been there only a few months.

4. Mr. Kremer commenced working at the Texaco gasoline station at 587 Kings Highway in June, 1975. He was to be paid 5¢ a gallon of gas sold. He worked at this station 5 or 6 hours each day. His wife, who was otherwise unemployed, would join him sometimes for an hour or so a day. The premises of the station was also occupied by an auto repair shop operated under the trade name of "Great Bear". Mr. Kremer had nothing to do with the auto repair business.

5. Deliveries of gasoline would be made to the gas station in Texaco trucks. Mr. Kremer would pay for a delivery by a money order made out to cash as he had been told to do by Mr. Schwartz. Mr. Kremer never himself ordered

gas. Sometimes the gas was already paid for before it was delivered. Mr. Skolnik came around every day or two to collect the station's receipts.

6. Mr. Kremer was told by Mr. Schwartz to register for the New York sales tax in his own name. He did so.

7. Sales tax returns were filed for the periods ending November 30, 1975 and February 28, 1976, bearing pre-printed labels in the name of Abe's Service Station at 587 Kings Highway, Brooklyn, New York. Each return showed gross sales and taxable sales in the same amount of \$5,499.00 and sales tax in the amount of \$440.00. The first return was prepared by an accountant and Mr. Kremer was told to prepare and sign identical returns for subsequent periods. Those were signed by Mr. Kremer.

8. a. The determination of tax due is based upon a finding that taxable sales amounted to \$360,254.00, an increase of \$349,256.00 over the \$10,998 as reported on sales tax returns. These audited taxable sales are composed of sales of automotive oil purchased at a cost of \$8,952.00 and marked up 100 percent for sales of \$17,904.00 and gasoline purchased at \$310,756.00 and marked up 25 percent for sales of \$388,445.00 against which a credit for state gasoline tax was allowed of \$46,095.00, resulting in net sales of \$342,350.00.

8. b. The auditor found that purchases from a company called "Alco Petroleum" averaged 25,875 gallons a month at an average cost of 54.15¢ a gallon. This multiplied by 12 for the 12 month audit period results in sales of 310,500 gallons, for a total cost of \$168,136.00. The only evidence in the record to show this are invoices from Texaco to Alco Petroleum.

8. c. The Auditor found that purchases of gasoline were made for cash from Kings County Fuel Oil Transportation Company. These purchases totaled 66,422 gallons for the three month period June, July and August of 1975. At an

average cost of 53.68¢ per gallon multiplied by four for the 12 month audit period, this results in sales of 265,688 gallons for \$142,620.00.

8. d. The auditor found that there were five purchases of oil between September 30, 1975 and January 26, 1976, totaling \$149.20. This was multiplied by 20 to arrive at a figure of \$2,984.00 said to represent the oil purchases of the four month period. (This multiple of 20 was applied because the auditor assumed that oil sales were underreported in the same ratio as gasoline sales and gasoline sales as reported were one-twentieth of gasoline sales as audited.) This result was multiplied by 3 to arrive at \$8,951.00 as the amount of oil purchases for the one-year audit period. Four of the oil purchases were from Tom's Auto Parts of 372 Avenue "V", Brooklyn, New York, and one was from Texaco at 1 North 17th Street, Brooklyn, New York.

9. Mr. Kremer denied any knowledge of deliveries of gasoline from Kings County Fuel Oil Transportation or from Alco Petroleum.

10. In May, 1976, Mr. Kremer left the Kings Highway gasoline station and operated a gasoline station owned by Capital in Great Neck, New York, for about one month until June, 1976. He now drives a taxi in New York.

#### CONCLUSIONS OF LAW

A. On this record, it is abundantly clear that the owner of the gasoline station being audited was Capital Auto Parts and not Mr. Kremer. It is further clear on this record that the person liable for the taxes of that corporation are Mr. Skolnik and Mr. Schwartz and not Mr. Kremer. Certainly Capital, Skolnik and Schwartz cannot be exculpated from their own liability for the taxes in issue. While the commission has the discretion by reason of section 1101(b)(8)(ii) of the Tax Law to tax Mr. Kremer as a vendor jointly responsible for the sales taxes in question with his employer, the Commission chooses not

to do so in this instance. It appears that Mr. Kremer himself was much more a victim rather than a participant in the circumstances created by Mr. Skolnik and Mr. Schwartz. Mr. Kremer did not himself profit from these circumstances.

B. The petition of Abraham Kremer is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 16, 1976 is cancelled.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER