

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Leon Machiz

:

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales and Use :
Tax under Article 28 & 29 of the Tax Law for the :
Period Ending 8/31/76.

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 15th day of May, 1981 he served the within notice of Decision by mail upon Leon Machiz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon Machiz
85 Red Brook Rd.
Great Neck, NY 11024

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
15th day of May

Ann A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leon Machiz :

: 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 Ending 8/31/76.

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 15th day of May 1981, he served the within notice of Decision by mail upon Burton Katz 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. Burton Katz
70 Marcus Blvd.
Hauppauge, NY 11787

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
15th day of May 1981.

Annice R. Haglund

J. Vredenburg

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

May 15, 1981

Leon Machiz
85 Red Brook Rd.
Great Neck, NY 11024

Dear Mr. Machiz:

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
Burton Katz
70 Marcus Blvd.
Hauppauge, NY 11787
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEON MACHIZ : 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 Ending August 31, :
1976. :

Petitioner, Leon Machiz, 85 Redbrook Road, Great Neck, New York 11024, 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 ending August 31, 1976 (File No. 23593).

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 16, 1980 at 10:45 A.M. Petitioner appeared by Burton Katz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether the proper amount of tax was asserted against petitioner upon the use of a racehorse in New York State.

FINDINGS OF FACT

1. The Audit Division, through correspondence to petitioner from October 15, 1976 through January 10, 1978, attempted to obtain information regarding his purchase of a racehorse, "Maura's Child".

2. On August 18, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Leon Machiz for the sales tax filing quarter ended August 31, 1976 in the amount of \$400.00 tax

plus penalty and interest. The Notice was issued as a result of petitioner's failure to reply to the above correspondence.

3. The Audit Division based its determination on an estimated market value of the racehorse as of August 17, 1976, the time at which it was raced at Yonkers, New York. The Audit Division determined tax due of \$400.00 from petitioner.

4. Petitioner purchased a 25 percent interest in "Maura's Child" on October 15, 1973. The racehorse was sold on December 14, 1977 for a total of \$3,700.00.

5. Petitioner argued that since he owned a 25 percent interest in the racehorse, his tax liability should be limited to his share. Further, he argued that the subsequent selling price of the racehorse was more indicative of the current market value on August 17, 1976 than that used by the Audit Division.

6. Petitioner offered no evidence to show the initial purchase price of "Maura's Child", his proportionate share paid, or the market value of the horse on August 17, 1976.

7. The application of penalties and interest was not raised by petitioner.

CONCLUSIONS OF LAW

A. That petitioner failed to show that the amount paid for his proportionate share of "Maura's Child" was less than the estimated market value determined by the Audit Division or to show that the market value on August 17, 1976 was actually less than that determined.

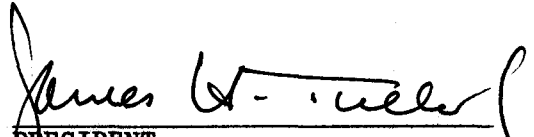
B. That in the absence of information showing the purchase price or current market value of "Maura's Child" the tax determined due by the Audit Division was proper and in accordance with the provisions of section 1138(a) of the Tax Law.


C. That the petition of Leon Machiz is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 18, 1978 is sustained with applicable penalties and interest thereon.

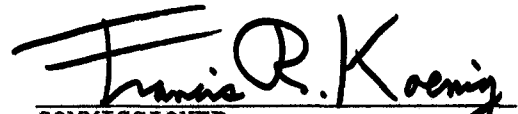
DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER