

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
George A. Mayes

:

:

: 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 9/1/72 - 8/31/75.

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 26th day of June, 1981, he served the within notice of by mail upon George A. Mayes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George A. Mayes  
11 Gold St.  
Warrensburg, NY 12885

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  
26th day of June, 1981.

*George A. Hagelund*

*J. Vredenburg*

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

June 26, 1981

George A. Mayes  
11 Gold St.  
Warrensburg, NY 12885

Dear Mr. Mayes:

Please take notice of the of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 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 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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE A. MAYES	:	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 September 1, 1972 through	:	
August 31, 1975.	:	

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Petitioner, George A. Mayes, 11 Gold Street, Warrensburg, New York 12885, 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 September 1, 1972 through August 31, 1975 (File No. 19800).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on February 14, 1980 at 1:00 P.M. and continued on June 12, 1980 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUES

I. Whether the result of a field audit performed by the Audit Division, properly reflects petitioner's additional sales tax liability.

II. Whether the Notice of Determination and Demand for Payment of Sales and Use Taxes Due should be cancelled on the grounds that the Law Bureau's answer to the perfected petition did not answer individually each of the allegations made.

FINDINGS OF FACT

1. On December 1, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against George A. Mayes for the period September 1, 1972 through August 31, 1975 in the amount of \$9,689.68 tax, plus penalties and interest. The Notice was issued as a result of petitioner's failure to furnish records for audit.

2. Petitioner was a distributor of Amway household products. Sales were made both to retail customers and to sub-distributors of Amway products. As of March 1, 1974, Amway collected sales tax directly from its distributors based on the retail selling prices of its products.

3. As a result of a conference held subsequent to the issuance of the above Notice, petitioner made available for audit sales and purchase invoices for the period January 1, 1973 through February 28, 1974 and state income tax returns for 1973 and 1974. No records were available for the period prior to January 1, 1973.

On audit, the Audit Division found that gross sales reported on petitioner's state income tax return for 1973 exceeded the amount of sales on the invoices made available for the same period. Therefore, the Audit Division used the quarterly average of gross sales reported on petitioner's state income tax return for 1973 as the average gross sales for each quarter in the audit period of September 1, 1972 through February 28, 1974.

On review of the sales invoices made available, the Audit Division determined that 71.284 percent of the sales were taxable when sold in the absence of any resale certificates. It applied the taxable ratio to the average gross sales determined in the audit period and computed tax due thereon of \$1,719.03. Petitioner reported sales tax of \$178.43 on his sales

and use tax returns filed. The Audit Division held additional tax due of \$1,540.60 as a result of the audit. The Audit Division, however, did not reduce the amount of the Notice issued.

4. Petitioner submitted a properly completed resale certificate from Nancy Hall, one of petitioner's sub-distributors. The submission of this certificate reduced the ratio of petitioner's taxable sales to 19.132 percent.

5. A resale certificate was submitted from another sub-distributor of petitioner; however, the certificate submitted lacked the vendor's registration number.

6. Petitioner paid tax of \$100.00 on a notice issued as a result of non-filing of a sales and use tax return for the period December 1, 1972 through February 28, 1973. Subsequently, petitioner filed a sales and use tax return for the same period showing sales tax due of \$28.35 and use tax of \$53.13. The audit results reflected the sales tax subsequently reported of \$28.35; however, it did not consider the balance of the tax payment of \$18.52 computed as follows:

\$100.00	Tax paid on Notice
- 53.13	Use tax
<u>\$ 47.87</u>	
- 28.35	Sales tax
<u>\$ 18.52</u>	Balance

7. At the hearing, petitioner raised the defense that the Law Bureau's answer to his perfected petition was deficient in that it failed to properly answer each of the 26 numbered paragraphs in the perfected petition as required under 20 NYCRR 601.6(a)(2). The Law Bureau's answer contained the following summary as to the allegations made:

"The Department of Taxation and Finance as and for its answer to the perfected petition:

1. Denies each and every allegation set forth in the perfected petition except as hereinafter stated."

CONCLUSIONS OF LAW

A. That the audit performed by the Audit Division did not give consideration to the sales made by petitioner for resale by his sub-distributor as found in Finding of Fact "4". Petitioner's taxable sales ratio determined by the Audit Division is reduced to 19.132 percent.

B. That the additional resale certificate submitted by petitioner in Finding of Fact "5" did not set forth the purchaser's number of his registration certificate as required under the provisions of section 1132(c) of the Tax Law and was therefore not in proper form. That petitioner did not sustain the burden of proving that those receipts allegedly covered by said resale certificate were not taxable.

C. That the sales tax reported by petitioner is increased by \$18.52 to reflect the overpayment of tax for the quarter ended February 28, 1973 pursuant to Finding of Fact "6".

D. That the additional tax due for the period March 1, 1974 through August 31, 1975 is cancelled pursuant to Finding of Fact #2.

E. That except as noted in Conclusions "A", "C" and "D" above, the audit performed by the Audit Division was proper and in accordance with the provisions of section 1138(a) of the Tax Law.

F. That the Law Bureau's failure to advise petitioner of the defense of each of the 26 allegations individually does not result in a cancellation of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due. Petitioner was not prejudiced by the fact that the defense was summarized. The requirement of 20 NYCRR 601.6(a) should not be regarded as mandatory but

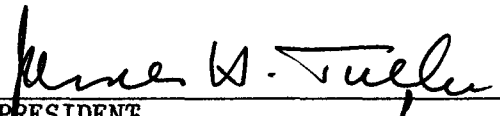
is directory only. (Matter of Santoro v. State Tax Commission, Albany County Special Term, Conway, J., January 4, 1979; Matter of Jay S. and Rita T. Hamelburg, Albany County Special Term, Prior, Jr., D. H., December 6, 1979).

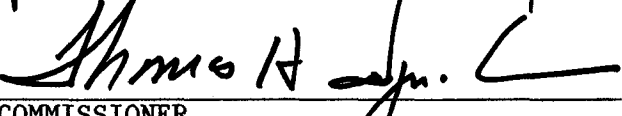
G. That the petition of George A. Mayes is granted to the extent indicated in Conclusions "A", "C" and "D" above; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 1, 1975, together with the applicable penalties and interest; and that, except as so granted, the petition is in all other respects denied.

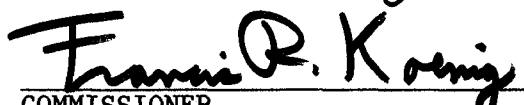
DATED: Albany, New York

JUN 26 1981

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

August 21, 1981

George A. Mayes  
11 Gold Street  
Warrensburg, N.Y. 12885

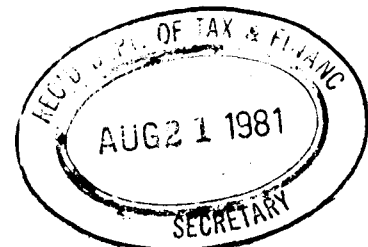
Dear Mr. Mayes:

Thank you for your letter which brought to our attention the inadvertent typing error. For your information I've enclosed a corrected copy of the June 26, 1981 cover letter.

Please be advised that the error does not change the date of the Decision nor does it increase the time you have to proceed under Article Seventy-Eight of the Civil Practice Law and Rules. Therefore, you still have until October 26, 1981 to make application to the New York State Supreme Court.

Very truly yours,

John J. Sollecito  
Director  
Tax Appeals Bureau





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

George A. Mayes  
11 Gold St.  
Warrensburg, NY 12885

Dear Mr. Mayes:

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