

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Len Ragozin

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 Periods 9/75, 11/75 & 4/76. :

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 13th day of February, 1981, he served the within notice of Decision by mail upon Len Ragozin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Len Ragozin
81 Perry St.
New York, NY 10014

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
13th day of February, 1981.

Connie A. Hagelund

J. Vredenburg

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

February 13, 1981

Len Ragozin
81 Perry St.
New York, NY 10014

Dear Mr. Ragozin:

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	:	
LEN RAGOZIN	:	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 Periods September 15, 1975,	:	
November 10, 1975 and April 15, 1976.	:	

Petitioner, Len Ragozin, 81 Perry Street, New York, New York 10014, 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 periods September 15, 1975, November 10, 1975 and April 15, 1976 (File No. 21586).

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 March 21, 1980 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether use tax was properly assessed on racehorses brought into New York State for the purpose of sale through "claiming races".

FINDINGS OF FACT

1. On December 21, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Len Ragozin, for the tax due on three racehorses (Captain Bill, Rock Fight and Yuxon Make It) purchased outside New York State.

Credit for tax paid to New Jersey was allowed under reciprocity provisions and the balance of \$770.00 in tax, plus penalties and interest, was assessed against petitioner.

2. Petitioner purchased "Captain Bill" for \$5,000.00 at a claiming race in Delaware on June 28, 1975 and raced it in Belmont on September 15, 1975. "Rock Fight" was purchased by petitioner on October 29, 1975 for \$5,000.00, and sales tax of \$250.00 was paid to New Jersey. It raced at Aqueduct on November 10, 1975. "Yucan Make It" was purchased by the petitioner on March 23, 1976 for \$9,000.00 and sales tax of \$450.00 was paid to New Jersey. It raced at Aqueduct on April 15, 1976.

It was the Audit Division's position that a use tax is due on the purchase of these racehorses at the time they are brought into New York State for use in this state by a resident thereof.

3. Petitioner contended that the above racehorses were brought into New York State for the purpose of sale through "claiming races". A "claiming race" is one in which a racehorse is offered for sale, title to the horse passing to the person "claiming" it at the start of the race.

4. Petitioner argued that since it is the practice of the Department to assess a use tax on racehorses only after they are starters in a race and since title to the horse in a "claiming race" vests in the new owner, there was no moment at which he was liable for use tax. No evidence was submitted to show that the three racehorses in issue were "claimed" at such races.

5. Petitioner further argued that since the sales tax is collected from the new owner at the time a "claim" is made, there is an incident of both a sales and a use tax on the same item, at the same time. The

sales tax liability is imposed upon the new owner and the use tax liability is imposed upon the seller on his prior purchase.

6. Petitioner did not raise an issue regarding the application of penalties and interest.

CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law imposes a compensating use tax for the use within this state of any tangible personal property purchased at retail; and that "use" is defined by section 1101(b)(7) as the exercise of any right or power over tangible personal property by the purchaser thereof.

B. That petitioner's entrance of racehorses in "claiming races" in New York State constituted a taxable use within the meaning of section 1101(b)(7). (Jacobs v. Joseph, 282 A.D.2d 622, 126 N.Y.S.2d 274.) That the use taxes determined by the Audit Division were proper and in accordance with section 1110 of the Tax Law.

C. That the petition of Len Ragozin is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 21, 1977 is sustained with applicable penalties and interest.

DATED: Albany, New York

FEB 13 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE

TAX APPEALS BUREAU

TO *STC*..... DATE *3/2/81*..

*Taxpayer's copy returned, no
better address.*

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

February 13, 1981

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81 Perry St.
New York, NY 10014

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cc: Petitioner's Representative

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DATED: Albany, New York

FEB 13 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

B/A
Sent

Len Ragozin
81 Perry St.
New York, NY 10014

