

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Seymour & Shirley Sacks :
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 3/1/73 - 4/30/75. :

State of New York
County of Albany

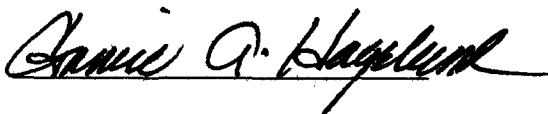
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of September, 1981, he served the within notice of Decision by certified mail upon Seymour & Shirley Sacks, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

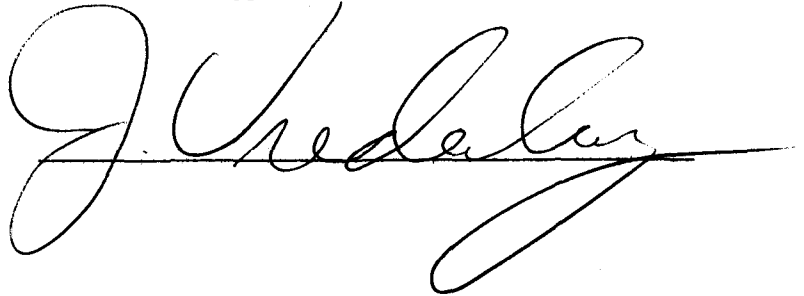
Seymour & Shirley Sacks
7006 N.W. 93rd Ave.
Tamarac, FL 33321

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
25th day of September, 1981.





STATE OF NEW YORK
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AFFIDAVIT OF MAILING

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 25th day of September, 1981, he served the within notice of Decision by certified mail upon David Kaminsky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Kaminsky
500 Fifth Avenue
New York, NY 10036

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
25th day of September, 1981.

Annex A. Haglund

J. Vredenburg

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

September 25, 1981

Seymour & Shirley Sacks
7006 N.W. 93rd Ave.
Tamarac, FL 33321

Dear Mr. & Mrs. Sacks:

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
David Kaminsky
500 Fifth Avenue
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SEYMOUR SACKS and SHIRLEY SACKS	:	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 March 1,	:	
1973 through April 30, 1975.	:	

Petitioners, Seymour Sacks and Shirley Sacks, 7006 N.W. 93rd Avenue, Tamarac, Florida 33321, 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 March 1, 1973 through April 30, 1975 (File No. 15116).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 25, 1980 at 10:30 A.M. Petitioners appeared by David Kaminsky, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined additional sales taxes for the period March 1, 1973 through April 30, 1975.

II. Whether the Audit Division properly valued the furniture, fixtures and equipment transferred by petitioners to the purchaser of their business.

FINDINGS OF FACT

1. Petitioners, Seymour Sacks and Shirley Sacks, operated a gasoline service station and a cigarette store at one location and a retail liquor store

at another location. The businesses were sold on April 30, 1975 for \$120,000.00.

2. On June 3, 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 petitioners for the period March 1, 1973 through April 30, 1975 for taxes due of \$1,320.76, plus penalty and interest of \$483.02, for a total of \$1,803.78.

3. An audit of the petitioners retail liquor store determined that no additional sales tax was due.

4. On audit, the Audit Division determined that petitioners' sales records for the gasoline station and the cigarette store location were inadequate to verify the accuracy of reported taxable sales. However, it was found that purchase records were complete. Therefore, based on the total number of gallons of gasoline purchased and selling prices supplied by petitioners, the Audit Division computed taxable gasoline sales of \$151,066.00. Oil purchases were marked up 100 percent to arrive at oil sales of \$1,412.00. Taxable cigarette sales of \$33,902.00 were computed based on the total cigarette purchases and the selling prices supplied by petitioners. The audit also disclosed that petitioners failed to report candy and soda sales of \$2,487.00. Total sales taxes on the above sales amounted to \$9,450.70. Petitioner reported sales taxes of \$8,629.94, leaving additional sales taxes due of \$820.76.

The Division also asserted a sales tax of \$500.00 on furniture, fixtures and equipment transferred to the purchaser of the business based on a value of \$10,000.00 (\$8,000.00 for the gasoline station and \$2,000.00 for the liquor store). The value of the furniture, fixtures and equipment was obtained from

the purchaser's Federal income tax return for 1975. The closing statement on the sale of the business did not show a sales price for furniture, fixtures and equipment.

5. Petitioners argued that discounts on gasoline were given to regular customers and local business people and that the audit did not give consideration to shrinkage of gasoline caused by evaporation. Petitioners offered no substantial evidence to support their arguments.

6. The books and records maintained by petitioners for the gasoline station and cigarette store were insufficient for the Audit Division to determine the exact amount of taxable sales and sales taxes due.

7. Petitioners acted in good faith and did not willfully attempt to evade the taxes at issue.

CONCLUSIONS OF LAW

A. That since petitioner's record keeping was insufficient, the Audit Division properly determined additional sales taxes due from such information as was available in accordance with the provisions of section 1138(a) of the Tax Law and that petitioners have failed to sustain the burden of showing error.

B. That in the absence of any evidence to show the actual sales price of furniture, fixtures and equipment transferred with the sale of petitioners' business, the value placed on such tangible personal property by the Audit Division was proper.

C. That the penalty is cancelled and interest shall be computed at the minimum statutory rate.

D. That except as granted in Conclusion of Law "C", the petition of Seymour Sacks and Shirley Sacks is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 3, 1976, is sustained.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION

James H. Teller
PRESIDENT

Frank R. Kosci
COMMISSIONER

Mark J. Smith
COMMISSIONER