

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Sunvet Gift Shop, Inc.

:

:

: 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 3/1/74-2/28/77.

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 Sunvet Gift Shop, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sunvet Gift Shop, Inc.
c/o Joseph Buchman
46 Belmont Dr. W.
Roslyn Heights, NY 11577

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.

James R. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sunvet Gift Shop, Inc. :

: 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 3/1/74-2/28/77.

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 Joseph Buchman 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. Joseph Buchman
46 Belmont Dr. W.
Roslyn Heights, NY 11577

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
26th day of June, 1981.

Conne A. Hagelund

J. Vredenburg

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

June 26, 1981

Sunvet Gift Shop, Inc.
c/o Joseph Buchman
46 Belmont Dr. W.
Roslyn Heights, NY 11577

Gentlemen:

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
Joseph Buchman
46 Belmont Dr. W.
Roslyn Heights, NY 11577
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SUNVET GIFT SHOP, INC.	:	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, 1974 through	:	
February 28, 1977.	:	

Petitioner, Sunvet Gift Shop, Inc., c/o Joseph Buchman, 46 Belmont Drive West, Roslyn Heights, New York 11577, 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, 1974 through February 28, 1977 (File No. 22699).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 19, 1981 at 1:15 P.M. Petitioner appeared by Joseph Buchman, Assistant Treasurer. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the Audit Division correctly determined the value of petitioner's furniture, fixtures and equipment subject to tax.

FINDINGS OF FACT

1. During the period at issue, petitioner, Sunvet Gift Shop, Inc., operated a card store located at 5801 Sunrise Highway, Sunvet Mall, Holbrook, New York.

2. On May 22, 1978, 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 petitioner covering the period March 1, 1974 through February 28, 1977 for taxes due of \$8,836.98, plus minimum statutory interest of \$2,570.50, for a total of \$11,407.48.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period at issue, to June 20, 1978.

4. The audit conducted by the Audit Division disclosed additional sales and use taxes due of \$17,215.89. On March 1, 1978, petitioner signed a consent to fixing of tax whereby petitioner agreed to the additional sales tax determined of \$8,378.91. The unresolved portion of the audit represented use tax asserted on purchases of \$126,242.64 which consisted of the following: furniture and fixtures -- \$65,180.84, leasehold improvements -- \$2,561.80 and leasehold -- \$58,500.00. The foregoing amounts were taken from petitioner's U.S. Corporation Income Tax Return filed for 1974.

5. On April 2, 1974, petitioner executed an agreement with Dawn Holding Corp. whereby petitioner acquired the lease to store #17 in Sun-Vet Mall Shopping Center together with Dawn's right, title and interest to the chattels and fixtures in the store. Said agreement was subject to the following security agreements:

\$10,400	City Wide Store Interior Corp.
15,500	Hallmark Cards, Inc.
25,600	Dawn Holding Corp.
58,500	Dawn Holding Corp.

The leasehold acquired for \$58,500.00 was on the real property.

6. Petitioner argued that the total cost of fixtures and equipment for the store was \$25,900 (City Wide -- \$10,400 and Hallmark -- \$15,500) and that sales tax was paid at the time of purchase.

Petitioner paid sales tax on the purchases from Hallmark Cards, Inc., however, it failed to show through any documentary evidence that sales tax was paid to City Wide Store Interior Corp. Furthermore, petitioner failed to show that the furniture and fixtures valued at \$65,180.84 on its corporate tax return was incorrect.

7. The leasehold improvements of \$2,561.80 represented purchases of a sign, two cash registers and a chair. Petitioner offered no evidence which indicated that sales tax was paid on said purchases.

CONCLUSIONS OF LAW

A. That the Audit Division erred in its valuation of petitioner's furniture, fixtures and equipment in that it included the value placed on the leasehold for real property of \$58,500.00; that the leasehold is an asset representing the right to use the leased real property and therefore is not subject to sales or use tax.

That in the absence of any substantial evidence to the contrary, the amount shown on petitioner's corporation tax return of \$65,180.84 for furniture and fixtures is correct. That based on Finding of Fact "6", the petitioner paid tax on \$15,500.00 of this amount. However, petitioner failed to establish that tax was paid on the balance of the furniture and fixtures as well as the leasehold improvements referred to in Finding of Fact "7". That the amount of furniture, fixtures and equipment subject to tax is reduced to \$49,680.84 and the petitioner is liable for the taxes due thereon of \$3,477.66 pursuant to section 1133(b) of the Tax Law.

B. That the petition of Sunvet Gift Shop, Inc. is granted to the extent that the additional taxes due are reduced to \$3,656.98; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment

of Sales and Use Taxes Due issued May 22, 1978; 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