

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sunyo, 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 6/1/73-2/28/77. :

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 3rd day of April, 1981, he served the within notice of Decision by mail upon Sunyo, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sunyo, Inc.
58 E. 8th Street
New York, NY 10003

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
3rd day of April, 1981.

Dennis G. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sunyo, Inc. :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
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for the Period 6/1/73-2/28/77. :

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 3rd day of April, 1981, he served the within notice of Decision by mail upon Charles H. Hight 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. Charles H. Hight
1246 Liberty Ave.
Hillside, NJ 07205

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
3rd day of April, 1981.

Connie A. Haglund.

J. Vredenburg

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

April 3, 1981

Sunyo, Inc.
58 E. 8th Street
New York, NY 10003

Gentlemen:

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
Charles H. Hight
1246 Liberty Ave.
Hillside, NJ 07205
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SUNYO, INC.
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 June 1, 1973 through February 28,
1977.

DECISION

Petitioner, Sunyo, Inc., 58 East Eighth Street, New York, New York 10003, 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 June 1, 1973 through February 28, 1977 (File No. 22180).

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 18, 1980 at 9:15 A.M. Petitioner appeared by Charles H. Hight, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the results of an audit performed by the Audit Division properly reflected petitioner's retail sales and its sales tax liability.

FINDINGS OF FACT

1. On January 12, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Sunyo, Inc. for the period June 1, 1973 through February 28, 1977 in the amount of \$18,021.65 tax, plus penalties and interest. The Notice was issued as a result of a field audit.

2. Petitioner executed a consent extending the period of limitation for assessment to June 20, 1978.

3. Petitioner operated a retail novelty store in New York City and also sold novelty items at wholesale which it exported to Japan.

4. On audit, the Audit Division reviewed purchases for the audit period, with the aid of the corporate president, and segregated the purchases into those sold through the store at retail and those exported to Japan. Petitioner's accountant was not available at the time of audit to offer any fiscal records. The Audit Division found purchases sold at retail to be \$171,849.00 for the audit period which represented 49 percent of total purchases made.

A markup test was performed on purchases made during May 1977. The retail markup was determined to be 89.78 percent, and the wholesale markup was determined to be 16.21 percent. The application of the retail markup to store purchases resulted in taxable sales of \$326,133.00 for the audit period. Petitioner reported taxable sales of \$94,841.00 on its sales and use tax returns filed. The Audit Division determined additional taxable sales of \$231,292.00 and tax due thereon of \$18,021.65.

Upon petitioner's contention at a pre-assessment conference that its bank deposits reflected its gross receipts, the Audit Division performed an "on the spot" reconciliation of current cash receipts to the cash register reading and found the cash on hand to be considerably in excess of the amount of sales rung on the register. Therefore, it determined petitioner's sales records and bank deposits to be insufficient for determining its taxable sales.

5. Petitioner offered as evidence summary worksheets prepared by its accountant for the years 1973 through 1977 which were used in the preparation of its Federal tax returns. The worksheets included a balance sheet and

profit and loss summary for each fiscal year. Also submitted were sales invoices for the years 1975 and 1976 to substantiate the export sales made. Included was a breakdown of store and export sales made. Based on these fiscal records petitioner's purchases sold at retail constituted 21 percent of its total purchases. Purchases sold at retail for the audit period were \$77,830.13. Taxable sales based on the markup determined by the Audit Division were \$147,706.00 for the audit period.

6. Petitioner offered no evidence to show that reasonable cause existed for not paying over its proper sales tax liability.

CONCLUSIONS OF LAW

A. That the audit performed by the Audit Division did not give proper consideration to the amount of purchases exported to Japan; that the total purchases sold at retail generated taxable sales of \$147,706.00 for the audit period; and that the additional taxable sales are reduced to \$52,865.00, to be consistent with Finding of Fact "5".

B. That except as noted in Conclusion of Law "A" above, the audit performed 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 Sunyo, Inc. is granted to the extent indicated in Conclusion of Law "A" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 12, 1978 with full penalties and interest thereon; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

APR 3 1981

STATE TAX COMMISSION

James G. Tully
PRESIDENT

Thomas H. [Signature]
COMMISSIONER

Francis R. Koenig
COMMISSIONER