

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Technicians, 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 10/1/72 - 11/30/75. :

State of New York
County of Albany

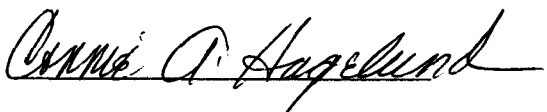
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of February, 1981, he served the within notice of Decision by mail upon Technicians, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

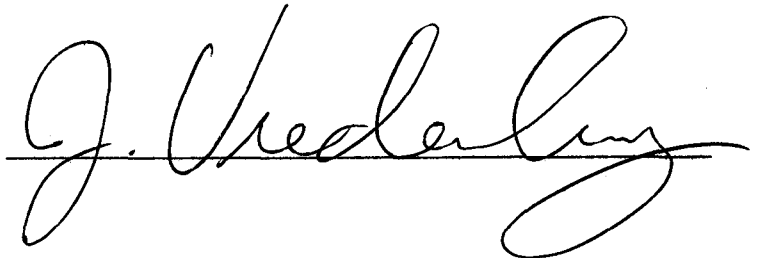
Technicians, Inc.
259 S. Pearl St.
Albany, NY 12202

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
20th day of February, 1981.





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STATE TAX COMMISSION

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Sales & Use Tax :
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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 20th day of February, 1981, he served the within notice of Decision by mail upon Leonard J. Senzon 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. Leonard J. Senzon
DiFabio & Couch
4 Automation La., Computer Park
Albany, NY 12205

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
20th day of February, 1981.

Connie G. Hogeland

J. Vredenburg

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

February 20, 1981

Technicians, Inc.
259 S. Pearl St.
Albany, NY 12202

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
Leonard J. Senzon
DiFabio & Couch
4 Automation La., Computer Park
Albany, NY 12205
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
TECHNICIANS, 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 December 1, 1972 through	:	
November 30, 1975.	:	

Petitioner, Technicians, Inc., 259 South Pearl Street, Albany, New York 12202, 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 December 1, 1972 through November 30, 1975 (File No. 17390).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on May 16, 1979 at 10:45 A.M. Petitioner appeared by Leonard J. Senzon, Esq. The Audit Division appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner was required to collect sales tax upon retail sales to and repairs made for welfare recipients.

FINDINGS OF FACT

1. On October 12, 1976, the Audit Division, pursuant to an audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period December 1, 1972 through November 30, 1975 in the amount of \$120,048.56, plus penalty and interest of \$52,549.24, for a total of \$172,597.80.

2. Petitioner is a New York corporation engaged in retail sales and service of household appliances and furniture. Many of petitioner's customers were welfare recipients in Albany and Rennsselaer Counties. Social service departments would request written estimates from petitioner for goods to be sold to welfare recipients. The estimate given by petitioner never included sales tax nor was the tax collected. Checks in payment by social service departments were sometimes made directly to petitioner and at other times were given to the welfare recipients who endorsed them over to petitioner.

3. The Department of Social Services, County of Albany, had a policy for replacement or repairs of essential items of household goods and appliances, under which three estimates were to be obtained by the client and the lowest estimate was selected. In transactions involving repairs, petitioner was called and informed of the necessity for the repair work. The check was prepared in the client's name and sent to the petitioner who received the check unendorsed by the client. It was deposited in the petitioner's business account under "Deposit Only".

4. Petitioner offered no exemption certificates for any of the sales and services made to or for welfare customers.

CONCLUSIONS OF LAW

A. That section 1116(a)(1) of the Tax Law provides an exemption from the imposition of sales tax to sales made to:

"The State of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer..."

B. That the sales at issue were made to individuals (the welfare recipients) and not to the State, its agencies, instrumentalities, public corporations or political subdivisions. Accordingly, such sales were not exempt from tax.

C. That section 1132(a) of the Tax Law provides:

"Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state."

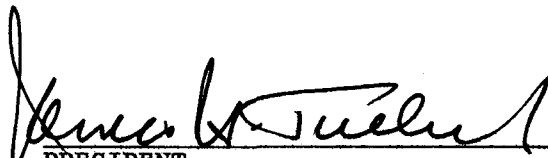
Therefore, petitioner was required to state the sales tax charged on its invoices and to collect same on account of the State.

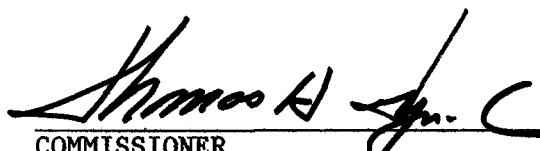
C. That the petition of Technicians, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 12, 1976 is sustained.

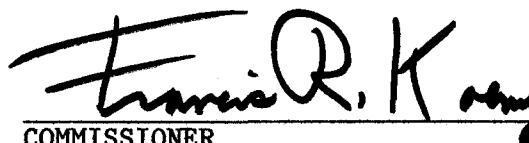
DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER