

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Trotter Equipment Co., Inc. :
Homer A. Trotter, President :

: 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 12/1/74 - 8/31/77.

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 31st day of July, 1981, he served the within notice of Decision by mail upon Trotter Equipment Co., Inc., Homer A. Trotter, President, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Trotter Equipment Co., Inc.
Homer A. Trotter, President
RD # 3, Box 27
Outer Washington St.
Watertown, NY 13601

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
31st day of July, 1981.

Quinn R. Haglund

J. Vredenburg

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

July 31, 1981

Trotter Equipment Co., Inc.
Homer A. Trotter, President
RD # 3, Box 27
Outer Washington St.
Watertown, NY 13601

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
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
TROTTER EQUIPMENT CO., 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, 1974 :
through August 31, 1977.

Petitioner, Trotter Equipment Co., Inc., Outer Washington Street, Watertown, New York 13601, 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, 1974 through August 31, 1977 (File No. 21995).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on July 24, 1980 at 1:15 P.M. Petitioner appeared by Homer A. Trotter, President. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether the additional tax determined by the Audit Division based on petitioner's 1976 Federal tax return filed is actually due and owing.

FINDINGS OF FACT

1. On January 13, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Trotter Equipment Co., Inc. for the period December 1, 1974 through August 31, 1977. The Notice was issued as a result of a field audit asserting tax due of \$2,194.92 plus penalties and interest for the quarters ended February 29, 1976 through November 30, 1976.

2. Petitioner operated an automotive dealership which also wholesaled truck bodies and equipment. Petitioner incorporated on January 2, 1976. Prior to that date, the business was operated as a sole proprietorship by the president, Homer A. Trotter.

3. On audit, the Audit Division found that gross sales on petitioner's U.S. Corporation Income Tax Return filed for 1976 exceeded the gross sales reported on its sales and use tax returns filed for the appropriate periods. The Audit Division deducted loans included as sales, exempt sales and sales tax totaling \$48,935.56 from the Federal gross receipts and determined taxable sales of \$114,988.44. Petitioner reported taxable sales of \$83,631.00 on its sales and use tax returns filed for 1976; therefore, the Audit Division determined additional taxable sales of \$31,357.44 and tax due thereon of \$2,194.92. This was the only deficiency in the audit findings.

4. Petitioner was unable to acquire the worksheets used in the preparation of its Federal return from its accountant; however, petitioner had all source documents for the period in issue and offered an analysis of its own findings showing additional gross sales of \$11,431.30, additional taxable sales of \$1,894.00 and additional tax due of \$129.11. Petitioner's source of information was the invoices issued which recorded all transactions of the corporation.

5. Based on the above analysis, petitioner filed an amended U.S. Corporation Income Tax Return for 1976 correcting gross sales from \$163,924.00 as originally reported to \$136,331.00. Petitioner filed its Federal returns on a cash basis.

6. Petitioner acted in good faith without intent to evade any tax.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law states that if a return required by this article is not filed, or if a return when filed is incorrect or insufficient,

the amount of tax due shall be determined by the tax commission from such information as may be available.

B. That petitioner had records available to perform a detailed analysis of its transactions for the period in issue; that the analysis of those records by petitioner disclosed additional tax due in the amount of \$129.11. The analysis further showed that the U.S. Corporation Income Tax Return filed by petitioner for the year 1976 was in error.

C. That the penalties and interest in excess of the minimum statutory rate are cancelled.

D. That the Audit Division is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 13, 1978 for the quarters ended February 29, 1976 through November 30, 1976 in accordance with Conclusions "B" and "C" above; and that, except as so granted, the petition of Trotter Equipment Co., Inc. is in all other respects denied.

DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER