

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William J. Twining, DVM :
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:
6/1/74 - 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 27th day of November, 1981, he served the within notice of Decision by certified mail upon William J. Twining, DVM, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William J. Twining, DVM
Rd. #4
Gouverneur, NY 13642

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
27th day of November, 1981.

Annie A. Haglund

J. Vredenburg

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

November 27, 1981

William J. Twining, DVM
Rd. #4
Gouverneur, NY 13642

Dear Mr. Twining:

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	:	
WILLIAM J. TWINING, DVM	:	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 June 1, 1974	:	
through February 28, 1977.	:	

Petitioner, William J. Twining, DVM, RD #4, Gouverneur, New York 13642, 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, 1974 through February 28, 1977 (File No. 20598).

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 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

- I. Whether the Audit Division properly asserted tax due against petitioner on his purchases of supplies, drugs and medicines used in treating farm animals.
- II. Whether section 1115(f) of the Tax Law as it applies to purchases made by veterinarians is unconstitutional.

FINDINGS OF FACT

1. Petitioner, William J. Twining, DVM, maintained a veterinary practice, the majority of which constituted the treatment of domestic farm animals. Petitioner made some purchases of drugs and medicines used in his practice without payment of tax. He issued resale certificates for such purchases.

2. On September 20, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes due against William J. Twining, DVM for the period June 1, 1974 through February 28, 1977 in the amount of \$734.67 tax plus penalties and interest.

3. The above Notice was issued as a result of petitioner's self-audit of his records as requested by the Audit Division. Petitioner submitted a total of \$13,426.94 in purchases on which no sales tax had been paid. It was the Audit Division's position that sales made to a veterinarian are not sales for resale pursuant to section 1115(f) of the Tax Law and thereby subject to tax imposed by sections 1105(a) and 1110 of the Tax Law.

4. Petitioner contended that the Tax Law as it related to veterinarians was unconstitutional in that it discriminated against his profession. He argued that purchases of drugs and medicines for the treatment of farm animals could be made by suppliers other than veterinarians for resale, without payment of the tax.

5. Petitioner further argued that some drugs and medicines can only be administered by a veterinarian; therefore, the exemption afforded farmers under section 1115(a)(6) of the Tax Law is contradicted because the taxes which veterinarians pay are ultimately included in their charges to said farmers.

6. Petitioner acted in good faith as evidenced by his compliance with the Audit Division's request for a self-audit.

CONCLUSIONS OF LAW

A. That section 1115(f) of the Tax Law states that tangible personal property designed for use in some manner relating to domestic animals and poultry when sold to a veterinarian shall not be deemed a sale for resale and shall not be exempt from the retail sales tax. Accordingly, the purchases of

supplies, drugs and medicines by petitioner are subject to the imposition of tax in accordance with sections 1105(a) and 1110 of the Tax Law.

B. That the constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional.

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 September 20, 1977 as noted in Conclusion "C" above; and that, except as so granted, the petition of William J. Twining, DVM must in all other respects be denied.

DATED: Albany, New York

NOV 27 1981,

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER