

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

John S. Wade

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 12/1/70-11/30/74. :

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 6th day of March, 1981, he served the within notice of Determination by mail upon John S. Wade, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John S. Wade  
9 School St.  
Randolph, NY 14772

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  
6th day of March, 1981.

*Gyrris A. Hagelund*

*J. Vredenburg*

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

March 6, 1981

John S. Wade  
9 School St.  
Randolph, NY 14772

Dear Mr. Wade:

Please take notice of the Determination 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

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In the Matter of the Application :  
of :  
JOHN S. WADE : DETERMINATION :  
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, 1970 through :  
November 30, 1974. :  

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Applicant, John S. Wade, 9 School Street, Randolph, New York 14772, filed an application 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, 1970 through November 30, 1974 (File No. 14755).

The applicant and the Audit Division entered into a Stipulation of Facts on July 18, 1978 and agreed to waive a small claims hearing in this matter.

After due consideration, the State Tax Commission makes the following determination.

ISSUE

Whether applicant, the purchaser in a bulk sales transaction, is liable for taxes determined to be due from the seller in accordance with section 1141(c) of the Tax Law.

FINDINGS OF FACT

1. Robin C. Ormond ("Ormond") operated a bowling alley and restaurant in Randolph, New York, known as the Twi-Lite Lanes. In August 1973, Randolph Plaza, Inc. commenced proceedings to evict Ormond for non-payment of rent. These proceedings resulted in an Order of Eviction and a money judgment of \$6,759.52 being taken against Ormond on September 13, 1973.

2. On September 27, 1973, applicant, John S. Wade, and Ormond entered into a written agreement whereby applicant was allowed to operate the Twi-Lite Lanes on a temporary basis until such time as the parties finalized terms and conditions regarding the sale of Ormond's interest in the Twi-Lite Lanes. On October 5, 1973, applicant and Ormond executed a Contract of Purchase and Sale which provided that Ormond agreed to transfer his interest in the equipment on the premises to applicant in return for a satisfaction of the money judgment obtained in the eviction proceeding and the payment of various recorded liens.

3. On June 19, 1974, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk indicating the sale of Ormond's interest in the Twi-Lite Lanes to John S. Wade. The scheduled date of sale was indicated as February 1, 1974, and the sales price as \$28,250.00. Sales tax on the bulk sale of \$1,977.50 was remitted with the notification. The notification was submitted by W. Park Catchpole, attorney for the seller, upon authorization and at the request of Knowles Congdon, attorney for the purchaser (applicant).

4. On July 10, 1975, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against applicant, John S. Wade (Purchaser), for sales tax due of \$15,456.71, plus penalty and interest of \$4,803.63, for a total due of \$20,260.34, which covered the period December 1, 1970 through November 30, 1974. The notice was for taxes determined to be due from Robin C. Ormond, seller, that represented the applicant's liability as purchaser.

5. On April 12, 1976, the Audit Division reduced the amount of tax due from the applicant on the above notice to \$3,169.54.

#### CONCLUSIONS OF LAW

A. That the Audit Division failed to give notice to the applicant of the total amount of taxes which New York State claimed to be due from the seller within 180 days (changed to 90 days effective January 1, 1978) from receipt of

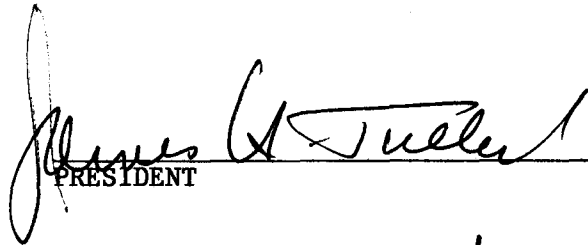
notice of the sale as prescribed in section 1141(c) of the Tax Law; that for such failure by the Audit Division, the applicant is relieved from the sales tax liability determined to be due from the seller, within the meaning and intent of section 1141(c) of the Tax Law.

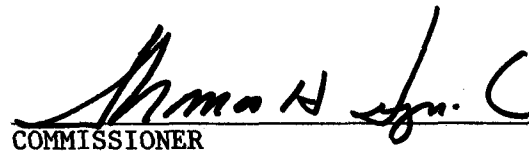
B. That the application of John S. Wade is granted and the Notice and Demand for Payment of Sales and Use Taxes Due issued July 10, 1975 is cancelled.


DATED: Albany, New York

MAR 06 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER