

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Joseph Basile
Officer of Basil Leaf, Ltd.

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
6/1/75 - 11/30/77.

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Joseph Basile, Officer of Basil Leaf, Ltd. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Basile
Officer of Basil Leaf, Ltd.
2465 Stuart St.
Brooklyn, NY 11229

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
18th day of June, 1982.

Arnie A. DeGand

J. Vredenburg

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

June 18, 1982

Joseph Basile
Officer of Basil Leaf, Ltd.
2465 Stuart St.
Brooklyn, NY 11229

Dear Mr. Basile:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

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	:	
JOSEPH BASILE	:	DECISION
Officer of BASIL LEAF, LTD.	:	
	:	
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, 1975 through	:	
November 30, 1977.	:	

Petitioner, Joseph Basile, 2465 Stuart Street, Brooklyn, New York 11229, 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, 1975 through November 30, 1977 (File No. 25231).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 22, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioner is personally liable for sales taxes due from Basil Leaf, Ltd. for the period June 1, 1975 through November 30, 1977.

FINDINGS OF FACT

1. Basil Leaf, Ltd. operated a luncheonette and candy store located at 4022 Farragut Road, Brooklyn, New York.

2. On October 10, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Joseph Basile, as officer of Basil Leaf, Ltd. covering the period June 1, 1975 through November 30, 1977 for taxes due of \$2,988.26, plus penalty and interest

of \$1,404.33, for a total of \$4,392.59. The amount of tax due resulted from a field audit of the books and records of Basil Leaf, Ltd. which disclosed additional taxable sales. Petitioner's liability was predicated on him being a financially responsible officer of Basil Leaf, Ltd.

3. Basil Leaf, Ltd. was incorporated on or about May 7, 1973. Petitioner was president and sole stockholder until the corporation was dissolved on November 28, 1977. Petitioner was responsible for the day to day financial affairs and management of the corporation until August 13, 1974, at which time he employed John Mineo to manage the operation of the business. Mr. Mineo was to pay the outstanding balance on two bank loans owed by petitioner, amounting to approximately \$8,000.00 to \$9,000.00. Mr. Mineo also agreed to pay the rent for the premises and the utilities. Upon satisfaction of petitioner's indebtedness, Mr. Mineo was to have ownership of the business. The store is located on real property owned by 4022 Farragut Realty Corp. of which petitioner is the sole stockholder. Petitioner retained the title of President and his authority to sign checks. Mr. Mineo was added as signatory to the bank account and given the title of Treasurer.

4. At the time of the audit, the petitioner was in the process of selling the business and the real property.

5. During the period at issue, the day to day business activities were managed by John Mineo. Mr. Mineo maintained the books and records, signed checks, and signed and filed sales tax returns. However, Mr. Mineo was not officially a corporate officer nor did he own stock.

6. Petitioner did not receive a salary however, his personal indebtedness for the bank loans was paid from corporate funds by Mr. Mineo.

CONCLUSIONS OF LAW

A. That section 1131(1) of the Tax Law provides:

"Persons required to collect tax' or 'persons required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services;... Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."

B. That section 1133(a) of the Tax Law provides that "...every person required to collect any tax imposed... shall be personally liable for the tax imposed, collected or required to be collected...".

C. That petitioner, in addition to hiring John Mineo to operate the business, was authorized to sign checks and was the president and sole stockholder throughout the period at issue. That corporate funds were to be used to pay off an indebtedness of petitioner. That the petitioner was negotiating the sale of the business at the time of the State's audit. That petitioner is a person required to collect tax pursuant to section 1131(1) and is therefore personally liable for the taxes determined due from Basil Leaf, Ltd. pursuant to section 1133(a) of the Tax Law.

E. That the petition of Joseph Basile is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 10, 1978 is sustained.

DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION

James G. Truel
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER