

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Boyertown Burial Casket Company :
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 12/1/78-2/28/79. :

AFFIDAVIT OF MAILING

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 9th day of November, 1982, he served the within notice of Decision by certified mail upon Boyertown Burial Casket Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Boyertown Burial Casket Company
23 North Walnut St.
Boyertown, PA 19512

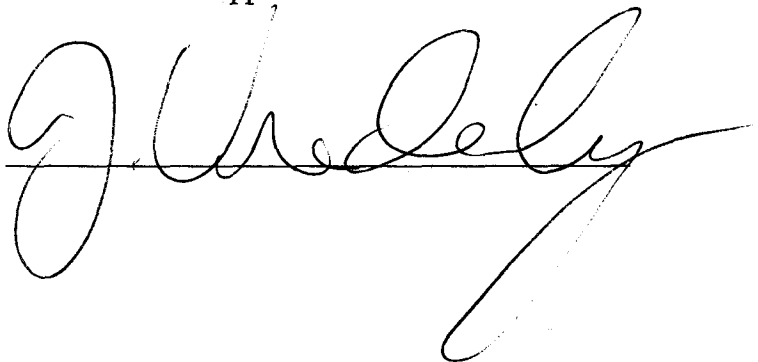
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
9th day of November, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

November 9, 1982

Boyertown Burial Casket Company
23 North Walnut St.
Boyertown, PA 19512

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
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

BOYERTOWN BURIAL CASKET CO.

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,
1978 through February 28, 1979.

Petitioner, Boyertown Burial Casket Co., 23 North Walnut Street, Boyertown, Pennsylvania 19512, 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, 1978 through February 28, 1979 (File No. 33074).

On January 12, 1982, the petitioner advised the State Tax Commission, in writing, that it desired to waive a small claims hearing and submitted the case to the State Tax Commission based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the State Tax Commission is authorized to cancel interest computed at the minimum rate prescribed by law.

FINDINGS OF FACT

1. On November 28, 1979, the Tax Compliance Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner, Boyertown Burial Casket Company, for the period December 1, 1978 through February 28, 1979 in the amount of \$23,951.86.

The Processing Division did not receive petitioner's Part -Quarterly Sales Tax Return for December, 1978 and payment of the amount due shown thereon of \$17,811.00. As a result, the foregoing notice was issued with applicable penalty and interest.

2. Petitioner made several inquiries between June, 1979 and April, 1980 as to whether check #3918 dated January 22, 1979 in the amount of \$17,811.00 was cashed. Finally, on April 30, 1980, the Processing Division advised petitioner to issue a replacement check and send copies of the return sent with the original check and a stop payment order. On May 5, 1980, petitioner complied with this request.

3. On June 2, 1980, a Notice of Assessment Review was issued to petitioner which cancelled the penalty and that portion of interest above the minimum statutory rate asserted on the notice and demand issued November 28, 1979, resulting in a revised amount due of \$1,331.73.

4. Petitioner filed a petition seeking cancellation of the minimum interest imposed.

CONCLUSIONS OF LAW

A. That section 1142 of the Tax Law authorizes and empowers the State Tax Commission to remit penalties, but not interest, computed at the rate of six percent per annum or the minimum rate set by the Tax Commission.

B. That the Tax Compliance Bureau computed the interest due at the minimum rate prescribed by law and that in accordance with section 1142 of the Tax Law, the Tax Commission does not have authority to cancel such interest.

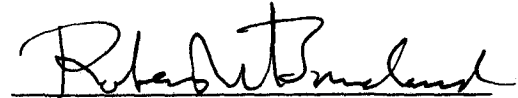
C. That the petition of Boyertown Burial Casket Co. is denied and the Notice and Demand for Payment of Sales and Use Taxes Due issued November 28, 1979, as revised June 2, 1980, is sustained.

DATED: Albany, New York

NOV 09 1982

STATE TAX COMMISSION

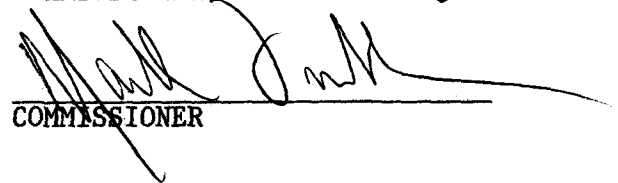
ACTION



PRESIDENT



COMMISSIONER



COMMISSIONER