

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Ben Bratman
T/A Utica TV, Inc.

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
12/1/75-11/30/78.

State of New York
County of Albany

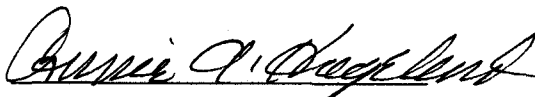
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Ben Bratman, T/A Utica TV, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ben Bratman
T/A Utica TV, Inc.
1232 Ralph Ave.
Brooklyn, NY 11236

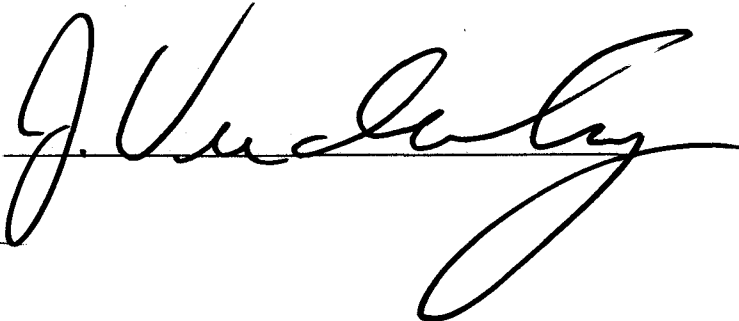
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Ben Bratman :

T/A Utica TV, Inc. :

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 12/1/75-11/30/78. :

State of New York
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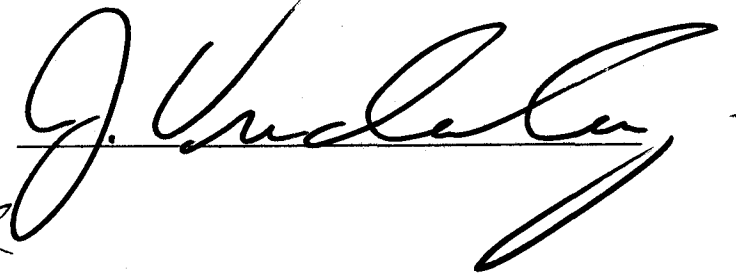
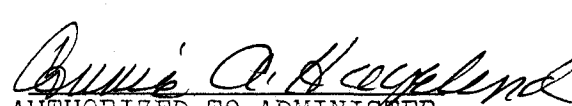
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon John R. Serpico the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John R. Serpico
186 Joralemon St.
Brooklyn, NY 11201

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
6th day of October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 6, 1982

Ben Bratman
T/A Utica TV, Inc.
1232 Ralph Ave.
Brooklyn, NY 11236

Dear Mr. Bratman:

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
John R. Serpico
186 Joralemon St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BEN BRATMAN	:	DECISION
T/A UTICA TV, INC.	:	
	:	
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,	:	
1975 through November 30, 1978.	:	

Petitioner, Ben Bratman T/A Utica TV, Inc., 1232 Ralph Avenue, Brooklyn, New York 11236, 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, 1975 through November 30, 1978 (File No. 28210).

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 November 19, 1981, at 10:45 A.M. Petitioner appeared by John R. Serpico, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the audit procedure used by the Audit Division in an examination of petitioner's books and records accurately determined additional sales taxes due for the period December 1, 1975 through November 30, 1978.

FINDINGS OF FACT

1. Petitioner, Ben Bratman T/A Utica TV, Inc., operated a furniture store located at 229 Utica Avenue, Brooklyn, New York.
2. On September 20, 1979, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes

Due against petitioner covering the period December 1, 1975 through November 30, 1978 for taxes due of \$3,985.92, plus minimum statutory interest of \$877.75, for a total of \$4,863.67.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period at issue, to March 19, 1980.

4. On audit, the Audit Division found that petitioner's bank deposits were \$49,824.00 greater than taxable sales reported on sales tax returns filed for the period under audit. The Division considered these excess bank deposits as additional taxable sales and asserted taxes due thereon of \$3,985.92.

The Audit Division did not request nor examine any other books and records.

5. Petitioner sold its furniture on the installment basis. The customer is required to make an initial deposit at which time the furniture is transferred to the customer. A sales invoice is prepared and the customer is credited thereon for the amount of the deposit. Petitioner maintained a ledger card for each customer to record subsequent payments and for control of its accounts receivable.

Petitioner reported the total sales price of the furniture and the applicable tax due thereon on the sales tax return filed for the period in which the sale took place.

6. Petitioner's customers are primarily persons with low income and, consequently, extended periods of time elapsed from the date of the sale to when final payment was received.

7. Petitioner maintained sufficient books and records from which the Audit Division could have verified or determined the actual sales made by petitioner.

CONCLUSIONS OF LAW

A. That under the circumstances herein, the audit procedure described in Finding of Fact "4" did not accurately determine additional sales taxes due from petitioner; that such procedure in and of itself is not a sufficient basis for concluding that taxable sales were underreported when adequate books and records were available for examination to determine whether a deficiency, if any, existed.

Accordingly, the additional taxes of \$3,985.92 determined due on audit are cancelled.

B. That the petition of Ben Bratman T/A Utica TV, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 20, 1979 is cancelled.

DATED: Ablany, New York

OCT 06 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER