

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Brhel & Bidwell TV Sales & Service, Inc. :
d/b/a B & B TV Sales & Service :
: 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 :
6/1/76 - 5/31/79. :

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 26th day of November, 1982, he served the within notice of Decision by certified mail upon Brhel & Bidwell TV Sales & Service, Inc., d/b/a B & B TV Sales & Service, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

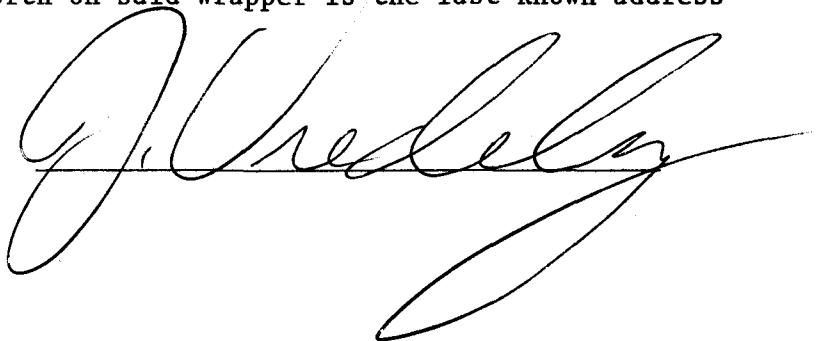
Brhel & Bidwell TV Sales & Service, Inc.
d/b/a B & B TV Sales & Service
3215 E. Main St.
Endwell, NY 13760

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
26th 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 26, 1982

Brhel & Bidwell TV Sales & Service, Inc.
d/b/a B & B TV Sales & Service
3215 E. Main St.
Endwell, NY 13760

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	:	
	:	
BRHEL & BIDWELL TV SALES & SERVICE, INC.	:	DECISION
D/B/A B & B TV SALES & SERVICE	:	
	:	
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, 1976	:	
through May 31, 1979.	:	

Petitioner, Brhel & Bidwell TV Sales & Service, Inc. d/b/a B & B TV Sales & Service, 3215 E. Main Street, Endwell, New York 13760, 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, 1976 through May 31, 1979 (File No. 31557).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, State Office Building Annex, Binghamton, New York, on December 4, 1981 at 9:00 A.M. Petitioner appeared by Jack J. Bidwell, president. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUES

I. Whether a field audit performed by the Audit Division properly reflected petitioner's tax liability.

II. Whether fraud penalties assessed by the Audit Division are due and owing.

FINDINGS OF FACT

1. On June 20, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Brhel & Bidwell TV

Sales & Service, Inc. d/b/a B & B TV Sales & Service, for the period June 1, 1976 through May 31, 1979. The Notice asserted additional tax due of \$6,958.49, plus fraud penalty of \$3,479.28 and interest of \$1,835.08, for a total of \$12,272.85. The liability was determined as a result of a field audit of petitioner's books and records.

2. Petitioner had executed consents to extend the period of limitation for assessment to June 20, 1980.

3. On audit, the Audit Division determined additional use tax due of \$196.71 on expense purchases and one office equipment purchase on which no sales tax was paid. Additional sales tax of \$39.64 was also determined to be due based on jurisdictional errors. These items are not at issue.

Concerning sales, the audit reflected exempt sales made by petitioner which were disallowed by the Audit Division for the following reasons:

(a) Sales were made by petitioner on which no tax was charged. These sales were conceded by petitioner as additional taxable sales with tax due thereon of \$2,094.58.

(b) Sales were made by petitioner showing out-of-state delivery addresses which were either picked up at the store or delivered within New York State. Additional tax due of \$2,659.77 was determined to be due on such sales.

(c) Exempt sales were made by petitioner for which no proper exemption or resale certificates were on file or substantiation of out-of-state delivery. Additional tax of \$1,042.75 was determined due thereon.

(d) Sales made to radio and television stations in exchange for advertising services were made without collection of sales tax. Tax due on these transactions was determined of \$474.41. Petitioner conceded that the tax is due on these transactions.

A reconciliation of the total of the disallowed exempt sales as a result of the audit, exempt sales substantiated on audit and taxable sales reported by the petitioner on its sales and use tax returns was made to the gross sales recorded in petitioner's sales ledger. This reconciliation showed additional gross sales in the ledger of \$6,480.26. These were determined to be additional taxable sales by the Audit Division and tax of \$450.63 was determined due.

The Audit Division thereby determined total additional sales and use tax due of \$6,958.49 based on the detailed analysis of sales and purchases.

4. The Audit Division based its assertion of the fraud penalty on the fact that some out-of-state delivery addresses listed on sales invoices were confirmed to be New York residences by the telephone numbers listed on the invoices. Other invoices were altered changing New York addresses to out-of-state addresses.

5. Petitioner submitted additional exemption certificates to substantiate exempt sales disallowed on audit. Additionally, petitioner submitted substantiation for deliveries to some out-of-state residents which had previously been held subject to tax on audit. The evidence submitted was sufficient to reduce petitioner's tax liability to \$5,766.69.

6. Petitioner admitted that he had actual knowledge that many sales slips indicating out-of-state addresses were in fact for deliveries within New York State for which no tax was charged. The corporate officer responsible for such actions is no longer with petitioner.

CONCLUSIONS OF LAW

A. That petitioner submitted sufficient evidence for a redetermination of tax due to \$5,766.69 pursuant to Finding of Fact "5".

B. That except as noted in Conclusion of Law "A" above, the audit performed by the Audit Division was proper and in accordance with the provisions of section 1138(a) of the Tax Law.

C. That section 1145(a) of the Tax Law provides:

"(2) If the failure to file a return or to pay over any tax to the tax commission...is due to fraud, there shall be added to the tax a penalty of fifty percent of the amount of the tax due..."

D. That the Audit Division properly determined that petitioner fraudulently omitted from its taxable receipts sales made in New York State under the guise of delivery outside New York State.

E. That the petition of Brhel & Bidwell TV Sales & Service, Inc. d/b/a B & B TV Sales & Service is granted to the extent indicated in Conclusion of Law "A" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 20, 1980 with the applicable fraud penalties and interest thereon; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 26 1982

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER