

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Harold Cohen :
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 12/1/74-10/10/75. :

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 14th day of December, 1982, he served the within notice of Decision by certified mail upon Harold Cohen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold Cohen
1427 E. 35th Street
Brooklyn, NY 11243

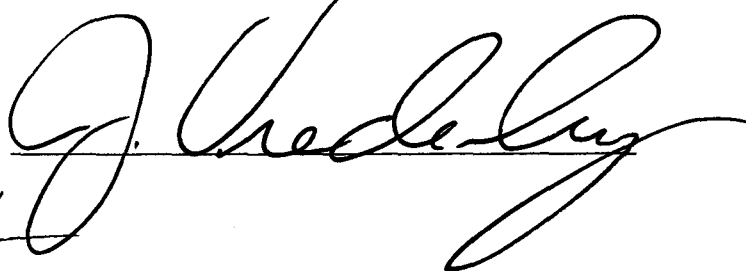
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
14th day of December, 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 :
Harold Cohen :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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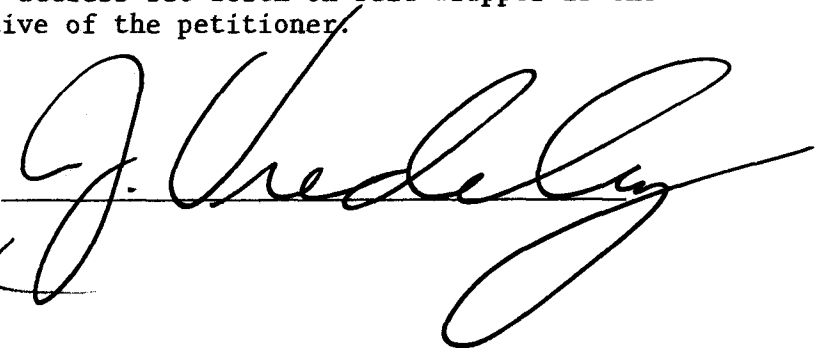
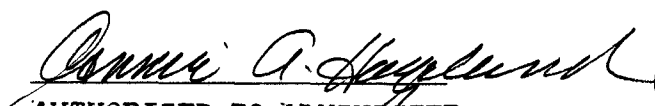
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Murray Hirsch the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Murray Hirsch
1 Hansen Place, Suite 1207
Brooklyn, NY 11243

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
14th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

December 14, 1982

Harold Cohen
1427 E. 35th Street
Brooklyn, NY 11243

Dear Mr. Cohen:

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 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
Murray Hirsch
1 Hansen Place, Suite 1207
Brooklyn, NY 11243
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD COHEN	:	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, 1974	:	
through October 10, 1975.	:	

Petitioner, Harold Cohen, 1427 East 35th Street, Brooklyn, New York 11243, 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, 1974 through October 10, 1975 (File No. 32697).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 24, 1982 at 2:45 P.M. Petitioner appeared by Murray Hirsch, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner, as a responsible officer of an insolvent corporation, is personally liable for penalty and interest due from said corporation.

FINDINGS OF FACT

1. Petitioner, Harold Cohen, was the president and director of Hal Sales Corp. during the period at issue.

2. Hal Sales Corp. made an assignment for the benefit of creditors on October 10, 1975. Sometime thereafter, its inventory was sold at auction and the proceeds were held by the assignee for the benefit of creditors. At that

time there were sufficient funds derived from the sale to pay outstanding sales tax liabilities.

3. On or about January 30, 1976, the Attorney General of New York State filed a priority claim with the Supreme Court, County of Kings against Hal Sales Corp. for unpaid sales taxes of \$6,159.70 plus interest for the following periods:

<u>PERIOD</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/1/74 to 2/28/75	\$1,000.00	\$132.14	\$1,132.14
12/1/74 to 2/28/75	500.00	66.07	566.07
3/1/75 to 5/31/75	2,077.76	230.40	2,308.16
6/1/75 to 8/31/75	1,081.94	96.99	1,178.93
9/1/75 to 10/10/75	1,500.00	-0-	1,500.00
	<u>\$6,159.70</u>	<u>\$525.60</u>	<u>\$6,685.30</u>

The amount of the claim (tax plus interest) was amended to \$5,703.14 on July 1, 1977 to reflect a return filed for the period September 1, 1975 through October 10, 1975 showing taxes due of \$17.84.

4. The Audit Division received a dividend of \$4,000.95 from the assignee which was applied as follows:

Dividend	\$4,000.95
2/28/75	<u>1,500.00</u>
	2,500.95
5/31/75	<u>2,077.76</u>
	423.19
8/31/75	<u>1,081.94</u>
Balance	(\$658.75)

5. On December 12, 1980, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner for taxes due of \$676.59, plus penalty of \$1,169.39 and interest of \$3,049.10, for a total of \$4,895.08.

6. Petitioner admitted personal liability for the taxes of \$676.59 which were not paid by the assignee since such taxes were trust money on account of the State; however, petitioner argued that the penalty and interest charges

were incurred by the corporation and are not transferable to an individual officer.

CONCLUSIONS OF LAW

A. That section 1131(1) of the Tax Law provides that "any officer... of a corporation or of a dissolved corporation who as such officer... is under a duty to act for such corporation in complying with any requirement of this article" (Article 28) is a person required to collect tax.

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

C. That petitioner, Harold Cohen, was a person required to collect tax pursuant to section 1131(1) of the Tax Law and as such, is personally liable for the tax due from Hal Sales Corp. as well as applicable penalty and interest accrued thereon within the meaning and intent of section 1133(a) of the Tax Law.

That the Sales Tax Law does not excuse an officer of a corporation under a duty to act from personal liability for penalty and interest due New York State. However, section 1145(a)(1)(ii) of the Tax Law authorizes the State Tax Commission to remit all penalty and that portion of interest exceeding the minimum statutory rate, if it determines that the delay or failure to file or pay the tax due is for reasonable cause and not willful neglect.

D. That from October 10, 1975, the date of the assignment for the benefit of creditors, the assets of Hal Sales Corp. were under the sole control of the assignee for the benefit of creditors. Accordingly, from that date forward, the penalty and interest above the statutory rate asserted personally against

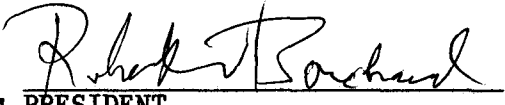
petitioner are cancelled (Matter of Joseph Bressner, State Tax Commission, June 19, 1981).

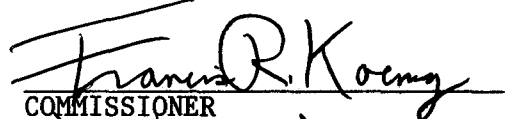
E. That the petition of Harold Cohen is granted to the extent indicated in Conclusion of Law "D"; that the Audit Division is hereby directed to modify the Notice and Demand for Payment of Sales and Use Taxes Due issued December 12, 1980; and that, except as so granted, the petition is in all other respects denied.

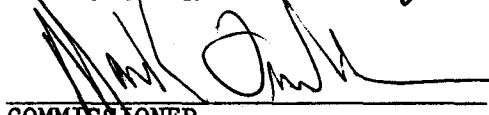
DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER