

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Sam Donsky	:	
d/b/a Sam Donsky Aluminum Products Co.	:	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	:	
3/1/75-8/31/79.	:	

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Sam Donsky, d/b/a Sam Donsky Aluminum Products Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sam Donsky
d/b/a Sam Donsky Aluminum Products Co.
80 East Park Ave.
Long Beach, NY 11561

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
29th day of December, 1982.

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

J. Vredenburg

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

December 29, 1982

Sam Donsky
d/b/a Sam Donsky Aluminum Products Co.
80 East Park Ave.
Long Beach, NY 11561

Dear Mr. Donsky:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SAM DONSKY
D/B/A SAM DONSKY ALUMINUM PRODUCTS CO.
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 March 1, 1975
through August 31, 1979.

DECISION

Petitioner, Sam Donsky d/b/a Sam Donsky Aluminum Products Co., 80 East Park Avenue, Long Beach, New York 11561, 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 March 1, 1975 through August 31, 1979 (File No. 30476).

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 April 28, 1982 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner is liable for tax on purchases of materials used in his contracting business.

FINDINGS OF FACT

1. Petitioner, Sam Donsky d/b/a Sam Donsky Aluminum Products Co., was a contractor engaged in the installation of storm doors and windows, window shades and blinds.

2. On June 3, 1980, as the result of an audit, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioner covering the periods March 1, 1975 through August 31, 1978,

and September 1, 1978 through August 31, 1979 for taxes due of \$5,561.28 and \$1,478.54, respectively.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period March 1, 1975 through February 28, 1978, to September 20, 1980.

4. On audit, the Audit Division, from an examination of bank deposits, determined gross sales for the audit period of \$135,052.00. Petitioner had certificates of capital improvement on file for all of such sales; however, the Audit Division determined that \$51,117.00 were sales of tangible personal property rather than capital improvements. Said amount was held to be taxable sales with tax due thereon of \$3,696.27.

Petitioner did not pay a sales or use tax on any purchases of materials. The Audit Division found that materials amounting to \$46,239.00 were used in capital improvement jobs and held petitioner liable for use taxes of \$3,343.55.

5. At the hearing, counsel for the Audit Division conceded that based on Saf-Tee Plumbing Corp. v. State Tax Commission, 77 A.D.2d 1, petitioner is not liable for the tax not collected on those sales for which a capital improvement certificate was furnished by the customer, but rather is subject to the use tax on materials of \$28,115.00 purchased for said jobs.

CONCLUSIONS OF LAW

A. That the sale of materials to petitioner constituted retail sales within the meaning and intent of section 1101(b)(4) of the Tax Law. Accordingly, since no tax was paid to the suppliers of said materials, petitioner is personally liable for the tax due in accordance with sections 1133(b) and 1110 of the Tax Law.


B. That in accordance with Finding of Fact "5", petitioner's tax liability is reduced to the applicable tax on material purchases of \$74,354.00.

C. That the petition of Sam Donsky d/b/a Sam Donsky Aluminum Products Co. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued June 3, 1980; and that, except as so granted, the petition is in all other respects denied.

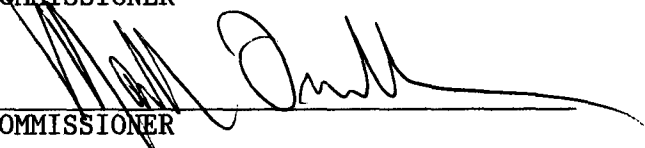
DATED: Albany, New York

STATE TAX COMMISSION

DEC 29 1982


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

1118



020798

Sam Donsky
d/b/a Sam Donsky Aluminum Products Co.
80 East Park Ave.
Long Beach, NY 11561

END NOT

RETURN

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

December 29, 1982

Sam Donsky
d/b/a Sam Donsky Aluminum Products Co.
80 East Park Ave.
Long Beach, NY 11561

Dear Mr. Donsky:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SAM DONSKY
D/B/A SAM DONSKY ALUMINUM PRODUCTS CO.
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 March 1, 1975
through August 31, 1979.

DECISION

Petitioner, Sam Donsky d/b/a Sam Donsky Aluminum Products Co., 80 East Park Avenue, Long Beach, New York 11561, 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 March 1, 1975 through August 31, 1979 (File No. 30476).

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 April 28, 1982 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner is liable for tax on purchases of materials used in his contracting business.

FINDINGS OF FACT

1. Petitioner, Sam Donsky d/b/a Sam Donsky Aluminum Products Co., was a contractor engaged in the installation of storm doors and windows, window shades and blinds.

2. On June 3, 1980, as the result of an audit, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioner covering the periods March 1, 1975 through August 31, 1978,

and September 1, 1978 through August 31, 1979 for taxes due of \$5,561.28 and \$1,478.54, respectively.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period March 1, 1975 through February 28, 1978, to September 20, 1980.

4. On audit, the Audit Division, from an examination of bank deposits, determined gross sales for the audit period of \$135,052.00. Petitioner had certificates of capital improvement on file for all of such sales; however, the Audit Division determined that \$51,117.00 were sales of tangible personal property rather than capital improvements. Said amount was held to be taxable sales with tax due thereon of \$3,696.27.

Petitioner did not pay a sales or use tax on any purchases of materials. The Audit Division found that materials amounting to \$46,239.00 were used in capital improvement jobs and held petitioner liable for use taxes of \$3,343.55.

5. At the hearing, counsel for the Audit Division conceded that based on Saf-Tee Plumbing Corp. v. State Tax Commission, 77 A.D.2d 1, petitioner is not liable for the tax not collected on those sales for which a capital improvement certificate was furnished by the customer, but rather is subject to the use tax on materials of \$28,115.00 purchased for said jobs.

CONCLUSIONS OF LAW

A. That the sale of materials to petitioner constituted retail sales within the meaning and intent of section 1101(b)(4) of the Tax Law. Accordingly, since no tax was paid to the suppliers of said materials, petitioner is personally liable for the tax due in accordance with sections 1133(b) and 1110 of the Tax Law.

B. That in accordance with Finding of Fact "5", petitioner's tax liability is reduced to the applicable tax on material purchases of \$74,354.00.

C. That the petition of Sam Donsky d/b/a Sam Donsky Aluminum Products Co. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued June 3, 1980; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

Robert W. Burchard
ACTING PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark A. ...
COMMISSIONER