

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Golden Jade Jewelry Co., Inc. :
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 12/1/72 - 11/30/75. :
:

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

Golden Jade Jewelry Co., Inc.
191 Canal St.
New York, NY 10013

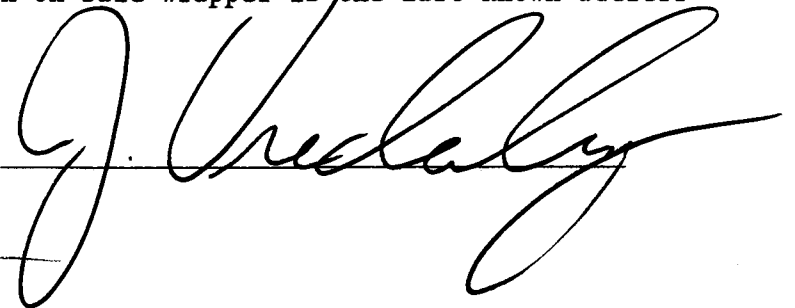
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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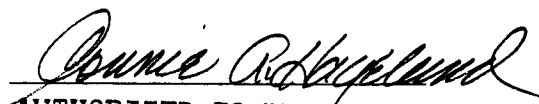
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Richard Wong the representative of the petitioner in the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

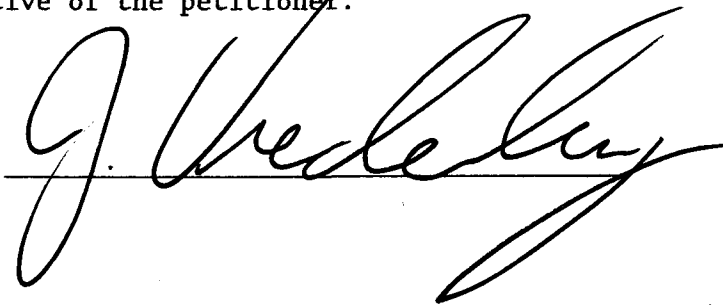
Richard Wong
Gim & Wong, P.C.
217 Park Row
New York, NY 10038

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

Golden Jade Jewelry Co., Inc.
191 Canal St.
New York, NY 10013

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 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
Richard Wong
Gim & Wong, P.C.
217 Park Row
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GOLDEN JADE JEWELRY CO., 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,
1972 through November 30, 1975.

DECISION

Petitioner, Golden Jade Jewelry, Co., Inc., 191 Canal Street, New York, New York 10013, 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, 1972 through November 30, 1975 (File No. 24047).

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 18, 1981, at 10:45 A.M. Petitioner appeared by Richard Wong, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner, the purchaser in a bulk sales transaction, is liable for sales taxes determined to be due from the seller in accordance with section 1141(c) of the Tax Law.

II. Whether petitioner's liability, if any, is limited to the sales price of tangible assets.

FINDINGS OF FACT

1. On September 15, 1975, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk from petitioner, Golden Jade Jewelry Co.,

Inc. regarding its purchase of Joyeria Latina, Inc., a jewelry business. Said notification indicated September 22, 1975 as the scheduled date of sale and listed the total sales price of the business as \$16,200.00. The sales price of the furniture and fixtures was \$3,000.00. The amount of the escrow fund was also \$3,000.00.

2. On September 18, 1975, the Audit Division notified petitioner and the escrow agent of a possible claim for New York State and local sales and use taxes from the seller. The notification stated that no distribution of funds or property to the extent of the amount of the State's claim may be made before the following conditions have been met:

1. The State Tax Commission has determined the seller's liability, if any.
2. Payment of such liability has been made to the state.
3. This office has authorized you to release the funds or property.

3. On March 5, 1976, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner for taxes due of \$13,757.08, plus penalty and interest of \$5,018.16, for a total of \$18,775.24. An audit of the seller's books and records disclosed additional taxes due for the period December 1, 1972 through November 30, 1975. Petitioner was held liable for the taxes determined due from the seller pursuant to section 1141(c) of the Tax Law.

On September 26, 1978, the amount of the state's claim was revised to tax due of \$10,035.12 plus penalty and interest.

4. The sales price of the business was for the leasehold assigned by the seller and the fixtures and equipment.

5. Petitioner argued that it provided notice of the sale and made provision for the holding of escrow to provide a source of ready funds for the payment of taxes and, as such, should be absolved from the seller's liability.

In the alternative, petitioner argued that its liability, if any, is limited to the value of the tangible assets purchased which is \$3,000.00.

6. Petitioner acted in good faith at all times.

CONCLUSION OF LAW

A. That the Tax Commission, upon receipt of the notice of bulk sale from petitioner, notified petitioner not to distribute funds or property until it determined if the seller is liable for sales and use taxes and the extent of such liability; that the Tax Commission notified petitioner of the amount of taxes due from the seller within 180 days (90 days effective January 1, 1978) of receipt of petitioner's notice of the sale as required by section 1141(c) of the Tax Law.

That petitioner transferred funds prior to being notified of the amount of the State's claim for taxes due from the seller and therefore, is personally liable for the payment of such taxes in accordance with the provisions of section 1141(c) of the Tax Law.

B. That section 1141(c) of the Tax Law limits the purchaser's liability to an amount not in excess of the purchase price or fair market value of the business assets sold, whichever is higher; that the leasehold, as well as the fixtures and equipment, are business assets within the meaning and intent of section 1141(c) of the Tax Law. Accordingly, petitioner's liability is not limited to \$3,000.00. Matter of R&H Garage Corp., State Tax Commission, January 6, 1981, Matter of Edsol Outfitters, Ltd., State Tax Commission, March 15, 1977.

C. That the penalty is cancelled and interest shall be computed at the minimum statutory rate.

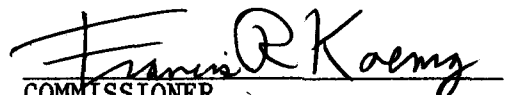
D. That the petition of Golden Jade Jewelry Co., Inc. is granted to the extent indicated in Conclusion of Law "C"; that the Audit Division is hereby directed to modify the Notice and Demand for Payment of Sales and Use Taxes Due issued March 5, 1976, as revised, September 26, 1978; and that, except as so granted, the petition is in all other respects denied.

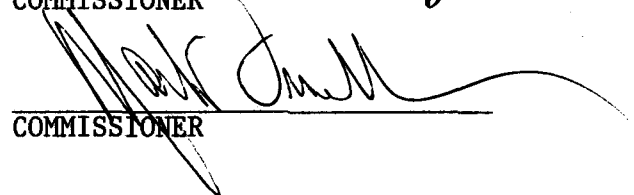
DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION


~~ACTING~~ PRESIDENT


COMMISSIONER


COMMISSIONER