

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
H & T Deli, 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 9/1/72-4/4/75.

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon H & T Deli, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

H & T Deli, Inc.
59 East End Ave.
New York, NY 10028

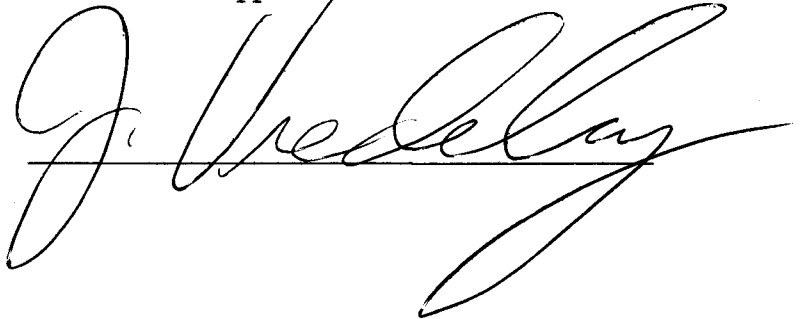
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 Paffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 29, 1982

H & T Deli, Inc.
59 East End Ave.
New York, NY 10028

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
Vasilios P. Exarchos
32-15 Broadway
Long Island City, NY 11106
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
H & T Deli, 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 9/1/72-4/4/75. :

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Vasilios P. Exarchos the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

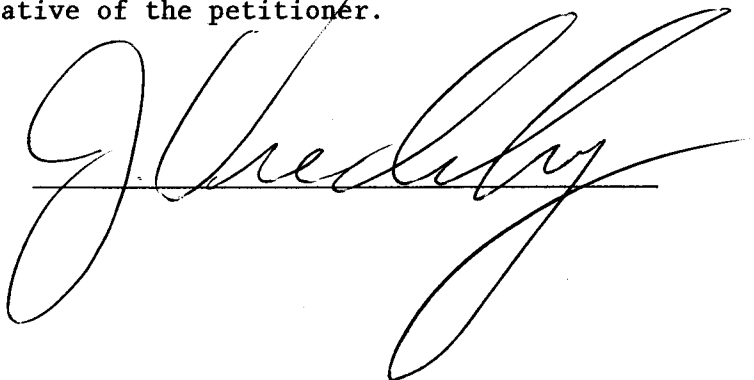
Vasilios P. Exarchos
32-15 Broadway
Long Island City, NY 11106

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
29th 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	:	
H & T DELI, INC.	:	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 September 1, 1972	:	
through April 4, 1975.	:	

Petitioner, H & T Deli, Inc., 59 East End Avenue, New York, New York 10028, 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 September 1, 1972 through April 4, 1975 (File No. 24728).

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 26, 1982 at 1:15 P.M. Petitioner appeared by Vasilios P. Exarchos, PA. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On or about April 4, 1975, petitioner, H & T Deli, Inc., purchased a delicatessen business located at 52 East End Avenue, New York, New York from East End Deli Corp.

2. On November 28, 1975, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1972 through April 4, 1975 for taxes due of \$20,175.34, plus penalty and interest of \$6,581.46, for a total of \$26,756.80.

The taxes due were determined based on a field audit of the seller's books and records which disclosed underreported taxable sales of \$242,897.00 and that furniture and fixtures transferred with the sale of the business had a value of \$30,582.00 rather than \$1,000.00 as claimed by the seller.

Petitioner was held liable for the taxes determined due from the seller in accordance with section 1141(c) of the Tax Law.

3. At the hearing, the Audit Division conceded that it overstated the additional taxable sales to the extent that taxable sales represented 22 percent of gross sales rather than the 27 percent used to compute the above liability.

4. The sales agreement executed by petitioner and East End Deli Corp. provided that the sales price of the business was \$32,500.00 payable as follows:

- a) \$2,500 paid on signing of the contract, to be held by Eugene A. Falk, attorney, in escrow, pending closing of title.
- b) Petitioner assuming the outstanding indebtedness due to Samson International of approximately \$25,000.00 payable in monthly notes of \$1,195.00.
- c) Petitioner assuming the outstanding indebtedness due to Hygrade Milk of approximately \$3,500.00.
- d) The balance of the purchase price, \$1,500.00, shall be paid in a series of weekly notes in the sum of \$250.00 per week.

The agreement further provided that \$2,000.00 shall be held in escrow by Eugene A. Falk to secure the payment of any taxes due and payable by East End Deli Corp.

5. Eugene A. Falk was the attorney for petitioner and East End Deli Corp. Petitioner argued that it paid Mr. Falk \$1,000 a month for approximately fifteen months which he in turn was to pay over to New York State in payment of the seller's sales tax liability. Petitioner went on to state that instead, Mr. Falk used these funds for his personal benefit and when it became aware of this fact, petitioner deposited the payments in a separate account. The balance of this separate account is approximately \$7,500.00 plus accrued interest.

6. Petitioner admitted that it is liable for the taxes due from East End Deli Corp., however, it took the position that it is not responsible for the monies misappropriated by Mr. Falk and not paid over to New York State.

7. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That petitioner is liable for the taxes determined to be due from East End Deli Corp. pursuant to section 1141(c) of the Tax Law; that any misappropriation of funds by the escrow agent would not effect the liability that exists against petitioner.

B. That the taxes asserted against petitioner shall be reduced in accordance with Finding of Fact "3".

C. That the penalty is cancelled and interest is reduced to the minimum statutory rate.

D. That the petition of H & T Deli, Inc. is granted to the extent indicated in Conclusions of Law "B" and "C" supra; that the Audit Division is hereby directed to modify the Notice and Demand for Payment of Sales and Use Taxes Due

issued November 28, 1975; 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

Sales & Use

1982.

STATE OF NEW YORK

STATE TAX COMMISSION

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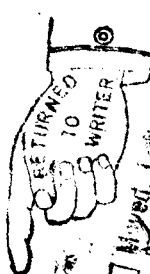
David Parchuck

David Parchuck

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



- ☐ RETURNED TO WRITER
- ☐ Moved, Left no address
- ☒ No such number
- ☐ Moved, not forwardable
- ☐ Addressee unknown
- NEW YORK, N. Y. 10028

H & T Deli, Inc.
59 East End Ave.
New York, NY 10028

