

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

March 5, 1982

Stanley Kanney
101 Harper Lane
New Rochelle, NY

Dear Mr. Kanney:

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
Daniel E. Laitman
Gleason, Laitman & Mathews
One State St. Plaza
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
 :
of :
 :
STANLEY KANNEY : 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 March 1, 1970 through February 29, :
1972. :

Petitioner, Stanley Kanney, 101 Harper Lane, New Rochelle, New York, 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, 1970 through February 29, 1972 (File No. 21039).

A formal hearing was held before Harvey Baum, Hearing Officer, on July 11, 1978 and continued to completion before Julius E. Braun, Hearing Officer, on December 12, 1978 at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Petitioner appeared by Daniel Laitman, Esq. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Samuel Freund and Irving Atkins, Esqs., of counsel).

ISSUE

Whether petitioner was liable as a person required to collect tax under sections 1131(1) and 1133(a) of the Tax Law for sales tax owed by Program Sales Corp.

FINDINGS OF FACT

1. On November 20, 1974, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Stanley Kanney for the period March 1, 1970 through February 29, 1972 in the amount of \$83,730.69, plus interest of \$17,189.64, for a total of \$100,920.33. An earlier notice was

revised because consideration for bad debts was disallowed. The original notice was for \$40,125.87, plus interest of \$8,061.01, for a total of \$48,186.88.

2. Stanley Kanney was employed by Budget Enterprises Corp. ("Budget"), a finance company, during the period in issue. Budget purchased installment contracts from approximately 15 vendors. These vendors were in the furniture, clothing and electronics businesses. The customers totalled around 20,000. Program Sales Corp. ("Program") was engaged in selling household furniture at retail and was located in Jersey City, New Jersey, and Jamaica, New York. Program, a New Jersey corporation, was a retail vendor which sold its retail customer contracts to Budget. On February 28, 1972, Program filed a petition for bankruptcy. Budget was one of its largest creditors. Program owed Budget approximately two or three hundred thousand dollars. Budget went out of business due to lack of capital when Program failed.

3. A field audit upon Program was completed on October 19, 1972 for the period September 1, 1969 through July 31, 1972. Sales tax returns had been filed and payments made for the quarters ending November 30, 1969, February 28, 1970 and May 31, 1972. Returns were filed for the other periods in issue on July 11, 1972 but no payments were made.

The audit, upon completion on October 19, 1972, was for the period of September 1, 1969 through July 31, 1972, beyond the period stated in the Notice of Determination and Demand for Payment of Sales and Use Taxes Due. The earlier Notice charged petitioner Stanley Kanney for tax due on total sales tax returns which were filed by Program on July 11, 1972 without any remittance. Total due on these returns amounted to \$40,125.87. The audit disallowed bad accounts. This resulted in another Notice being issued which increased the amount due to \$83,730.69, plus interest of \$17,189.64, for a total of \$100,920.33.

4. The U. S. Corporation Income Tax Return of Program for the fiscal year ending September 30, 1970, listed petitioner Stanley Kanney as president, owning 50 percent of common stock and receiving no compensation. Steve Farago was listed as vice-president owning 50 percent of the stock and receiving \$20,000.00 compensation. The U.S. Corporation Income Tax Return of Program for the fiscal year ending September 30, 1971, indicated one Ronald Stechler as president and Steve Farago as vice-president both owning 45 percent of the stock. The field audit report for the period September 1, 1969 through July 31, 1972 lists Stanley Kanney, a former officer, as owning 10 percent of the stock. Checks on account No. 03999398, Garden State National Bank of Hackensack, New Jersey, of Program dated July 24, 1970 were offered at the hearing. They were signed by Stanley Kanney and were payable to New York Telephone in the amount of \$38.94, to Professional Exchange in the amount of \$55.00, and, to Morse Electro Products in the amount of \$294.00.

5. (a) A First National City Bank, Jamacia, New York signature card of Program, offered at the hearing, listed the officers as Ronald Stechler, President; Steve Farago, Vice President; and Karen Diodato, Secretary. Also listed as an authorized signatory was Angelo Diodato. This account was opened October 6, 1970 and closed March 8, 1972 as unsatisfactory. The number of the account was 2160-0363.

(b) A General Resolution of Program, dated July 1, 1971, which was given to First National City Bank in relation to account number 2160-0363, also named the above officers.

(c) An annual report of Program for the year ending December 31, 1969, filed with the New Jersey Secretary of State, dated March 30, 1970, lists the officers as Steve Farago, President; and Karen Diodato, Secretary-Treasurer.

(d) A Statement of Affairs of Program, dated February 28, 1972, filed in the bankruptcy proceedings lists officers as Ronald Stechler, President and Director; and Karen Diodato, Secretary-Treasurer and Director.

6. (a) A former employee of Program testified that the officers were Mr. Diodato, Karen Diodato and Ronald Stechler.

(b) The accountant for Program testified that the petitioner, Stanley Kanney had no involvement with the management or operation of the corporation; that the three major managers and owners of the corporation were Mr. Diodato, Mr. Stechler, and Mr. Farago; and that the officers were Karen Diodato, Ronald Stechler, Steve Farago and later Brian Gobitz when Farago and Stechler resigned.

(c) The attorney for Program, who organized said corporation in New Jersey, affirmed that petitioner Stanley Kanney was not an officer nor involved in the management of the corporation.

7. All sales tax returns of Program during the period in issue were signed by the secretary Karen Diodato.

8. Petitioner Stanley Kanney assumed that checks he signed were for the convenience of Program.

9. There was no documentary or other substantial evidence that Stanley Kanney was either authorized or under a duty to collect bills for goods sold to corporate customers, nor any taxes due thereon.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law states in pertinent part:

..."[E]very 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."

A definition of said "person" is found in section 1131 (subdivision 1) which states:

"'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include: ...any officer or

employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article..."

B. That whether petitioner Stanley Kanney is a "person required to collect tax" is a factual question. (Stacy v. State, 82 Misc.2d 181, Matter of McHugh v. State Tax Commission, 70 A.D.2d 987).

C. That the holding of corporate office does not, per se, impose liability upon the office holder. (Monday v. United States, 421 F.2d 1210, cert. den. 400 U.S. 821, 27 L. ed. 48, 91 S. Ct. 38; Matter of Levin v. Gallman, 49 A.D.2d 434; and MacLean v. Procaccino, 80 Misc.2d 931, rev'd 53 A.D.2d 965).

D. That there exists overwhelming evidence that Steve Farago, Karen Diodato, Angelo Diodato and Ronald Stechler were responsible officers of Program and/or took part in the operations and management of Program.

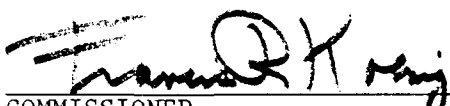
F. That Stanley Kanney was not a person required to collect tax, therefore, the petition of Stanley Kanney is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 20, 1974 is cancelled.

DATED: Albany, New York

MAR 05 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

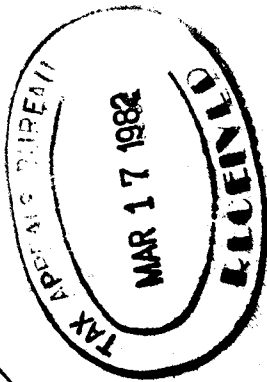
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

*Red's
Copy*

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Person with no address
has such number
is not forwardable

[Signature]
[Circular Stamp]
Daniel E. Laitman
Gleason, Laitman & Mathews
One State St. Plaza
New York, NY 10004

*Forwarding order
expired.*



**CERTIFIED
P 230 842 285
MAIL**