

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Joyeria Latina, Inc.	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
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.	:	

State of New York  
County of Albany

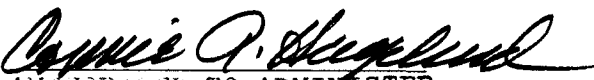
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of September, 1982, he served the within notice of Decision by certified mail upon Joyeria Latina, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

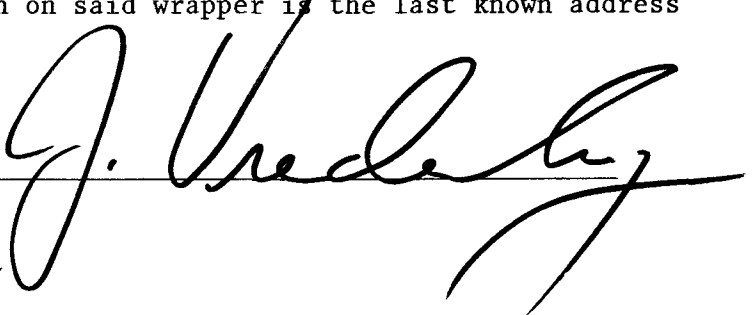
Joyeria Latina, Inc.  
c/o Arnaldo Contti  
91-10 212th St.  
Queens Village, NY 11420

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  
8th day of September, 1982.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Joyeria Latina, 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 12/1/72 - 11/30/75. :  
\_\_\_\_\_

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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Samuel Momrod Lewton the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

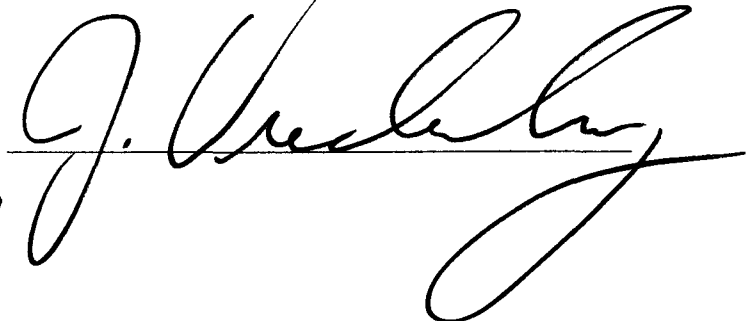
Samuel Momrod Lewton  
60 East 42nd St.  
New York, NY 10165

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  
8th day of September, 1982.

  
\_\_\_\_\_  
ATTORNEY AT LAW  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

September 8, 1982

Joyeria Latina, Inc.  
c/o Arnaldo Contti  
91-10 212th St.  
Queens Village, NY 11420

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 & 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  
Samuel Momrod Lewton  
60 East 42nd St.  
New York, NY 10165  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOYERIA LATINA, 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 December 1, 1972	:	
through November 30, 1975.	:	

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Petitioner, Joyeria Latina, Inc., c/o Arnolando Contti, 91-10 212th Street, Queens Village, New York 11420, 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. 23560).

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 9:15 A.M. Petitioner appeared by Samuel Momrod Lewton, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioner's reported nontaxable sales for the period December 1, 1972 through November 30, 1975.

FINDINGS OF FACT

1. Petitioner, Joyeria Latina, Inc., operated a wholesale and retail jewelry business.

The business was sold on or about September 22, 1975.

2. On March 5, 1976, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due

against petitioner covering the period December 1, 1972 through November 30, 1975 for taxes due of \$13,757.08, plus penalty and interest of \$5,018.16, for a total of \$18,775.24.

3. On audit, the Audit Division considered petitioner's total sales of \$216,377.94 as taxable because insufficient books and records were provided to substantiate that any portion of such sales were exempt. In addition, the Audit Division estimated salaries paid in cash of \$36,000.00 which were considered additional taxable sales along with the disallowed nontaxable sales, resulting in taxes due per audit of \$18,689.07. Petitioner paid sales taxes of \$4,931.99, leaving additional taxes due of \$13,757.08.

4. On September 26, 1978, the Audit Division revised the tax due to \$10,035.12 based on the results of a conference held by the Queens District Office. At such conference, petitioner substantiated that sales of \$14,897.50 to Victoria Joyeria, Inc. (an affiliated corporation) were for resale. Also, the Audit Division deleted the estimated cash salaries. Petitioner claimed that the remaining sales (\$134,901.54) were exempt on the basis that the jewelry was delivered outside New York State. The Audit Division attempted to verify petitioner's claim by sending inquiries to customers (names were provided by petitioner) requesting the amount of merchandise purchased and the place of delivery. The Division received two responses both indicating that the jewelry was picked up at petitioner's place of business. The balance of the letters sent (17) were returned undeliverable for various reasons.

5. Petitioner argued that different invoices are used for wholesale and retail sales. Petitioner explained that wholesale transactions to other jewelry dealers are on invoices that contain a consignment agreement and that the nontaxable sales it reported were on such invoices.

6. Petitioner adduced no substantial evidence to show that the jewelry was transferred to the purchaser outside New York State.

7. Petitioner failed to establish that its failure to collect tax on the transactions at issue was due to reasonable cause.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law specifically provides, in part, that it shall be presumed that all receipts for property or services...are subject to tax until the contrary is established, and the burden of proving that any receipt...is not taxable shall be upon the person required to collect tax.

B. That pursuant to 20 NYCRR 525.2(a)(3), the sales tax is a "destination tax", that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate.

C. That petitioner made sales of tangible personal property and services and failed to establish by documentary evidence or otherwise, that the jewelry was delivered or transferred to the purchaser outside New York State. Therefore, petitioner is liable for the sales taxes which it failed to collect from the customer in accordance with the provisions of section 1133(a) of the Tax Law.

D. That the petition of Joyeria Latina, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 5, 1976, as revised September 26, 1978, is sustained.

DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER