

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
I. Miller, Div. of Deberhams, 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 3/1/79-5/31/79. :

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

I. Miller, Div. of Deberhams, Inc.
730 Fifth Ave.
New York, NY 10019

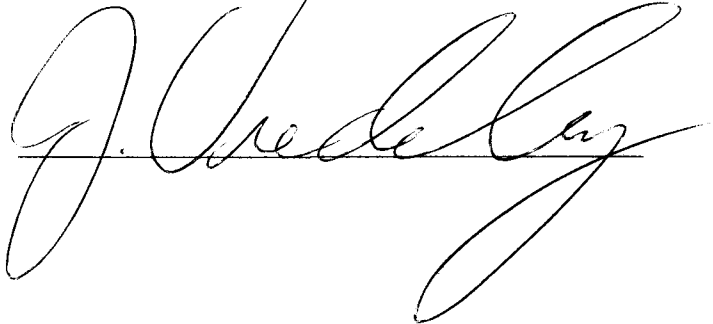
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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.

Kerry Haggan

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
I. Miller, Div. of Deberhams, 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 3/1/79-5/31/79. :
_____ :

State of New York
County of Albany

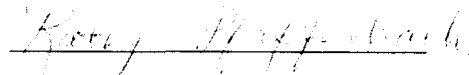
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Morton L. Coren the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morton L. Coren
108 Edgecliff Terr.
Yonkers, NY 10705


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
ALBANY, NEW YORK 12227

December 29, 1982

I. Miller, Div. of Deberhams, Inc.
730 Fifth Ave.
New York, NY 10019

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
Morton L. Coren
108 Edgecliff Terr.
Yonkers, NY 10705
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
I. MILLER, DIV. OF DEBERHAMS, 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 March 1, 1979
through May 31, 1979.

DECISION

Petitioner, I. Miller, Div. of Deberhams, Inc., 730 Fifth Avenue, New York, New York 10019, 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, 1979 through May 31, 1979 (File No. 32856).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 24, 1982 at 10:45 A.M. Petitioner appeared by Morton L. Coren. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner's delay in paying sales taxes for April, 1979 was due to reasonable cause.

FINDINGS OF FACT

1. The Processing Division received petitioner's Part-Quarterly Sales Tax Return and check in payment thereof for April, 1979, on July 23, 1979 in an envelope with a metered postmark of July 18, 1979.

On January 10, 1980, the Tax Compliance Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due for penalty and interest of

\$3,092.47, of which \$2,845.60 is applicable to the late filing of said return. This notice corrected a previous assessment issued November 28, 1979.

2. The April return filed by petitioner was dated May 15, 1979. Check number 11540 for \$31,256.32, payable to New York State Sales Tax, was dated May 16, 1979. Petitioner's cash disbursements journal shows the check was recorded on May 16, 1979. However, the check was paid by the bank on July 25, 1979.

3. Petitioner argued that office procedure was to mail checks the same day as they were written and there is no reason to believe that such procedure was not followed on May 16, 1979.

4. Petitioner offered no explanation as to why a return purportedly prepared and filed timely was received in an envelope with metered postmark of July 18, 1979.

CONCLUSIONS OF LAW

A. That petitioner's part-quarterly return for April, 1979 was required to be filed on or before May 20, 1979 in accordance with section 1136(b) of the Tax Law. Section 1145(a)(1) of the Tax Law authorizes the imposition of penalty and interest for failure to file a return or pay over any tax when due. Said section also provides for the Tax Commission's remission of penalty and that portion of interest exceeding the statutory minimum in the event that failure to file a return or pay over any taxes was due to reasonable cause.


B. That petitioner has failed to show that the Processing Division's delay in receiving the part-quarterly return for April, 1979 and payment thereof was due to reasonable cause.

C. That the petition of I. Miller, Div. of Deberham's, Inc. is denied and the Notice and Demand for Payment of Sales and Use Taxes Due issued January 10, 1980 is sustained.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION



ACTIVE PRESIDENT



COMMISSIONER



COMMISSIONER