

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

August 4, 1982

permailed
OCT 29 1982

Harold J. Phillips, Jr.
and O'Farrell Enterprises, Inc.
~~1429 W. Lake Rd.~~
~~Geneseo, NY 14454~~

46 Raymond L. Sciarrino
106 Main St.
Mount Morris NY 14510

Dear Mr. Phillips:

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) 1139 & 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
Raymond L. Sciarrino
106 Main St.
Mount Morris, NY 14510
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD J. PHILLIPS, JR.	:	DECISION
and O'FARRELL ENTERPRISES, 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 August 1974	:	
to December 1975.	:	

Petitioners, Harold J. Phillips, Jr. and O'Farrell Enterprises, Inc., 1429 West Lake Road, Geneseo, New York 14454, 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 August 1974 to December 1975 (File No. 25448).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on July 24, 1981 at 9:00 A.M. Petitioner appeared by Raymond L. Sciarrino, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a credit or refund of sales taxes paid to the State.

FINDINGS OF FACT

1. On January 19, 1978, Harold J. Phillips, Jr. filed an application for refund of State sales tax in the amount of \$34,393.27.

2. On December 15, 1978 the Audit Division advised petitioner that his claim for refund of sales tax was being denied on the grounds that claims for the period prior to December 1, 1974 were barred by the statute of limitations and substantiation had not been submitted to show that there was an overpayment of the tax.

3. On March 13, 1974, a contract was entered into between Texaco, Inc. and "R. J. O'Farrell d/b/a O'Farrell Enterprises, Inc." (sic) which authorized Texaco to add an extra three cents for each gallon of fuel delivered to O'Farrell Enterprises, Inc. This extra amount was to be applied to "outstanding indebtedness due from me to the State Tax Dept.". The contract was signed on behalf of the corporation by Hazel Hume, as secretary of the corporation. Checks were sent to the State for outstanding indebtedness due (sales taxes) in the amounts of \$18,340.27 for the period August 1974 to December 1974 and \$16,053.00 for January 1975 to December 1975, for a total of \$34,393.27.

4. Petitioner alleged the following:

"Corporation books do not authorize corporation secretary (Hazel Hume) or anyone else to enter into agreement with Texaco dated March 13, 1974. See form attached. (No seal attached to contract).

Corporation books do not authorize anyone to continue alleged contract after date of death of Richard O'Farrell on July 8, 1974.

The extra amount of \$.03 for each gallon should have applied to current sales tax owed by Harold Phillips (a corporation officer) from August, 1974 until December, 1975 when he closed business. Monies earned by Harold Phillips, as a corporation officer should not be applied to old debts of corporation and then have the State of New York charge Harold Phillips personally for current sales tax due. The unfairness of this procedure is obvious."

5. Petitioner acknowledged that Hazel Hume was secretary of O'Farrell Enterprises, Inc. and "who pretty much ran the business".

6. Petitioner became an officer of the corporation after the death of its chief operating officer, Richard O'Farrell. Mr. O'Farrell was the father of petitioner's wife.

CONCLUSIONS OF LAW

A. That Blackstone's rule, (1 Blackstone, Commentaries 1) that a corporation could speak and act only by its common seal, prevailed for some time. This technical rule of the common law is no longer necessary to render valid the acts and contracts of a business corporation. 11 N.Y. Jur., Corporations Sec. 172. See also section 44(a) of the General Construction Law.

B. That although the secretary of a corporation may, in some cases, perform no function other than that of keeping a record, a corporate secretary is ordinarily more than an amanuensis, and the corporation is bound by the acts within the scope of her authority and it has been declared generally that the secretary is one of the general managing agents of a corporation. 12 N.Y. Jur., Corporations Sec. 631.

C. That a corporation is for most purposes an entity separate and distinct from its individual members or stockholders and such entity remains unchanged and unaffected in its identity notwithstanding changes in its membership. 11 N.Y. Jur., Corporations Sec. 10.

D. That the absence of a seal on the contract with Texaco, Inc. is immaterial to its validity. The corporate secretary had apparent authority to bind the corporation. The death of an individual did not affect the corporation as an entity.

E. That pursuant to section 1139(a) of the Tax Law, a claim for refund or credit must be made within three years of the date when the tax was payable. In any event, notwithstanding the statute of limitations, payments made were for sales tax and were applied to the corporate petitioner's account.

F. That the petition for credit or refund of State sales tax is denied.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

Francis R. Koenig

COMMISSIONER

[Signature]
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Harold J. Phillips, Jr.
and O'Farrell Enterprises, 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 8/74 - 12/75.

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Harold J. Phillips, Jr., and O'Farrell Enterprises, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

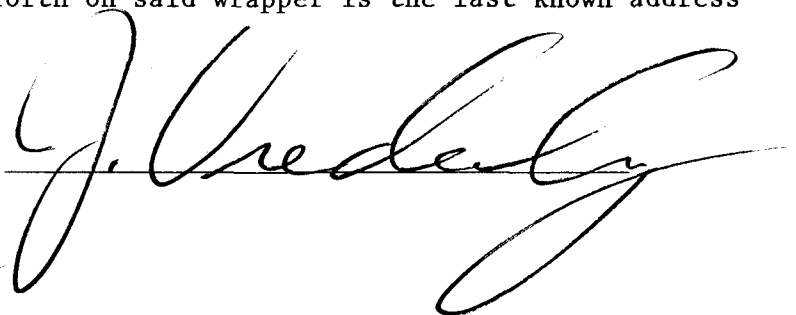
Harold J. Phillips, Jr.
and O'Farrell Enterprises, Inc.
1429 W. Lake Rd.
Geneseo, NY 14454

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
4th day of August, 1982.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Harold J. Phillips, Jr.
and O'Farrell Enterprises, 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 8/74 - 12/75.

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Raymond L. Sciarrino the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raymond L. Sciarrino
106 Main St.
Mount Morris, NY 14510

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
4th day of August, 1982.

Annie R. Highland

J. Vredenburg

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

August 4, 1982

Harold J. Phillips, Jr.
and O'Farrell Enterprises, Inc.
1429 W. Lake Rd.
Geneseo, NY 14454

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Phone # (518) 457-2070

Very truly yours,

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cc: Petitioner's Representative
Raymond L. Sciarrino
106 Main St.
Mount Morris, NY 14510
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Harold J. Phillips, Jr.
and O'Farrell Enterprises, Inc.

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for Redetermination of a Deficiency or a Revision :
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under Article 28 & 29 of the Tax Law for the :
Period 8/74 - 12/75.

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 October, 1982, he served the within notice of Decision by certified mail upon Harold J. Phillips, Jr., and O'Farrell Enterprises, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold J. Phillips, Jr.
and O'Farrell Enterprises, Inc.
c/o Raymond L. Sciarrino
106 Main Street
Mount Morris, NY 14510

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 October, 1982.

Charles G. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Jay Vredenburg

P 230 844 149
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

SENT TO
Raymond J. Sciarino
 STREET AND NO.
106 Main St
 P.O., STATE AND ZIP CODE
Mount Morris NY
 POSTAGE
4510
 CERTIFIED FEE
 SPECIAL DELIVERY
 RESTRICTED DELIVERY
 SHOW TO WHOM AND DATE DELIVERED
 SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY
 SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY
 SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY
 TOTAL POSTAGE AND FEES \$
 POSTMARK OR DATE

PS Form 3800, Apr. 1976



P 230 842 695
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

SENT TO
Raymond J. Sciarino
 STREET AND NO.
1499 W. Lake Rd
 P.O., STATE AND ZIP CODE
Perkasie, PA 14454
 POSTAGE
 CERTIFIED FEE
 SPECIAL DELIVERY
 RESTRICTED DELIVERY
 SHOW TO WHOM AND DATE DELIVERED
 SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY
 SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY
 SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY
 TOTAL POSTAGE AND FEES \$
 POSTMARK OR DATE

PS Form 3800, Apr. 1976

P 230 842 696
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

SENT TO
Raymond J. Sciarino
 STREET AND NO.
106 Main St
 P.O., STATE AND ZIP CODE
Mount Morris NY
 POSTAGE
4510
 CERTIFIED FEE
 SPECIAL DELIVERY
 RESTRICTED DELIVERY
 SHOW TO WHOM AND DATE DELIVERED
 SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY
 SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY
 SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY
 TOTAL POSTAGE AND FEES \$
 POSTMARK OR DATE

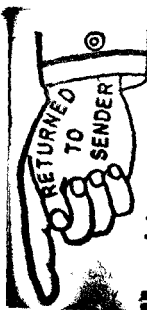
PS Form 3800, Apr. 1976

TA 26 (9-79)

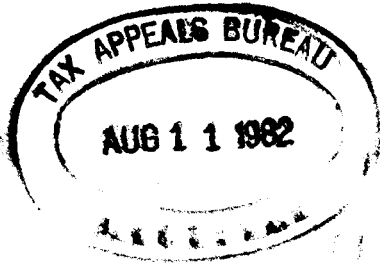
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



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Attempted Not Known
No Such Number
Fwd. Order Expired



Harold J. Phillips, Jr.
and O'Farrell Enterprises, Inc.
1429 W. Lake Rd.
Geneseo, NY 14454

