

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Piscitell Block Co., Inc. and : AFFIDAVIT OF MAILING
Michael Piscitell and Thomas Piscitell, :
Individually and as Officers :

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:
12/1/75 - 11/30/78.

State of New York
County of Albany

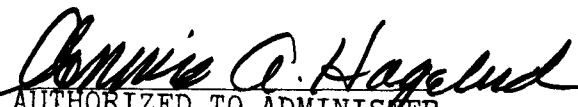
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon William H. Bogart the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

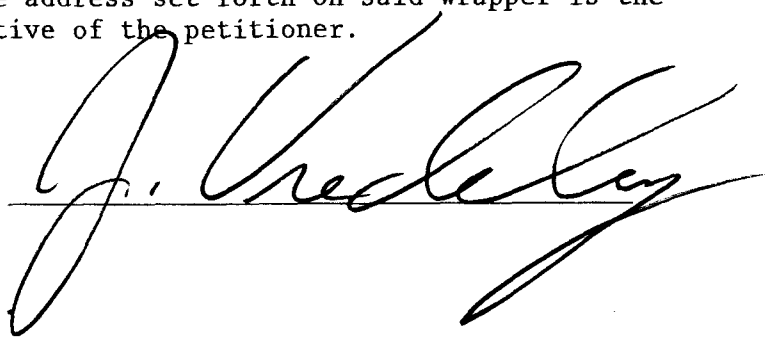
William H. Bogart
Bogart & Associates
Suite 1013, State Tower Bldg.
Syracuse, NY 13202

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
14th 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	:	
	:	
PISCITELL BLOCK CO., INC. AND	:	
MICHAEL PISCITELL AND THOMAS PISCITELL,	:	DECISION
INDIVIDUALLY AND AS OFFICERS	:	
	:	
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,	:	
1975 through November 30, 1978.	:	

Petitioners, Piscitell Block Co., Inc., and Michael Piscitell and Thomas Piscitell, individually and as officers, 501 Plum Street, Syracuse, New York 13202, 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, 1975 through November 30, 1978 (File Nos. 27943, 27955 and 27956).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on April 29, 1981, at 1:15 P.M. Petitioner appeared by William H. Bogart, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined the amount of sales and use tax liability of petitioners for the period under review.

FINDINGS OF FACT

1. On March 9, 1979, a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes was signed for Piscitell Block Co., Inc. ("the Corporation") by an authorized attorney which extended the period of limitation

for assessment for the taxable period of December 1, 1975 through February 29, 1976 to June 20, 1979.

2. On June 8, 1979, based on an audit of records, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the Corporation for the period of December 1, 1975 through November 30, 1978 in the amount of \$136,951.79, plus penalty of \$23,631.37 and interest of \$21,968.34, for a total of \$182,551.50. On June 8, 1979 the Audit Division also issued similar notices against Michael Piscitell and Thomas Piscitell, as officers of Piscitell Block Co., Inc.

3. The corporation was in the wholesale and retail building supply business. An audit of the corporation's records was conducted in April, 1979.

4. The auditor tried unsuccessfully to reconcile sales and cash receipts during the periods in issue. A closer look at the cash receipts journal revealed large cash deposits made several times a week which referred to a "trucking account". These turned out to be short term charge sales and over-the-counter cash sales.

At first, the auditor was told that the amount was actually trucking. No substantiation or detail were presented. Upon pressing the issue, he was shown a drawer full of sales invoices which purportedly represented the cash sales. Some of these invoices were checked. However there was no way of knowing whether all invoices were in the drawer. The entries which the auditor checked appeared in the cash receipts journal but were omitted from the sales tax returns.

For the month of September 1977, the auditor found that 10 percent of the accounts receivable were tax exempt. He then applied this ratio to the cash sales which included the trucking account to ascertain the corporation's

tax liability. For the three year audit period unreported cash receipts were determined to be \$1,352,975.98. This amounted to \$79,661.19 additional tax on the cash sales.

5. The auditor acknowledged that the books, records, and journals of Piscitell Block Co., Inc. were available. However he could not determine whether all invoices were available when shown the "drawer full" which he checked and found that not all entries were made on sales tax returns. No explanation was offered for this and no specific disagreement was indicated with the audit findings.

6. A use tax of \$147.28 was determined to be due on asset purchases which the petitioner has not contested.

7. The Corporation did not file sales tax returns for the period April 1, 1978 through November 30, 1978. Based on tax accrued in the sales journal, \$48,730.02 was found to be due for sales tax. Since no detail was available for total sales, the auditor used the 90 percent taxable ratio to 10 percent nontaxable to prorate sales on the long-term credit sales. Petitioners' representative acknowledged that the amount picked up on credit sales was not in issue.

8. During the period in issue, the Corporation constructed a building for its own use and which it now occupies. Invoices indicated that a use tax in the amount of \$8,005.51 was due on purchases of \$112,103.41 (at a 7 percent sales tax rate). In addition, there were certain purchases of an expense nature on which the Corporation failed to pay use or sales tax. These purchases amounted to \$5,825.57 and tax was found to be due thereon.

9. Petitioners claimed that the cash deposits were the result of rebates from suppliers, money transferred to the Corporation as a loan from officers,

some refunds from suppliers on overpayments and payments from the use of their equipment for snow plowing. It was claimed was that the tax rate ranged between four and six percent and not 7 percent which the auditor applied.

10. The Corporation's accountant sampled some 40 to 50 of the invoices. These represented deposits in the "trucking account". He could not estimate the percentage of invoices checked. He stated that there was a problem with their filing. He believed all the invoices were there but couldn't "honestly" say. He acknowledged that "accounting-wise" he would object to the "commingling" of certain items in the journal entitled "trucking" and that it would take an accountant a year to review in order to make a proper determination. The accountant acknowledged that the "taxable element of sales, if any, was not reported on the tax returns".

11. Petitioner offered no documentary or other substantive evidence that the "trucking account" represented loans from officers, and that the computations of the state auditor did not follow accepted accounting principles and procedures.

CONCLUSIONS OF LAW

A. That evidence presented at the hearing by the auditor showed that the books and records were inadequate and were erroneous, as not all sales were listed. The auditor also utilized the Corporation's invoices to show that sales tax returns which were filed did not reflect all sales and that for part of the period in issue no returns were filed. The error rate was derived from the detailed audit of a selected period and was accepted for some schedules.

This is within the mandate of section 1138 of the Tax Law that:

"(a)(1) If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the tax commission from such information as may be available."

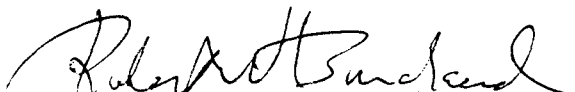
The Audit Division properly determined the amount of sales and use tax liability of petitioners for the period under review.

B. That the petition of Piscitell Block Co., Inc., and Michael Piscitell and Thomas Piscitell, individually and as officers, is denied and the Notices of Determination issued on June 8, 1979 are sustained.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

P 230 844 410

RECEIPT FOR CERTIFIED MAIL

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

SENT TO		<i>William H Bayart</i>		
STREET AND NO.		<i>State River Bldg #1013</i>		
P.O., STATE AND ZIP CODE		<i>Syracuse, N.Y. 13202</i>		
POSTAGE		\$		
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE		¢	
	OPTIONAL SERVICES	SPECIAL DELIVERY	¢	
		RESTRICTED DELIVERY	¢	
		RETURN RECEIPT SERVICE	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 230 844 411

RECEIPT FOR CERTIFIED MAIL

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

SENT TO		<i>Michael Piscitelli</i>		
STREET AND NO.		<i>204 Rose Ave.</i>		
P.O., STATE AND ZIP CODE		<i>Syracuse, N.Y. 13210</i>		
POSTAGE		\$		
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE		¢	
	OPTIONAL SERVICES	SPECIAL DELIVERY	¢	
		RESTRICTED DELIVERY	¢	
		RETURN RECEIPT SERVICE	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 230 844 449

RECEIPT FOR CERTIFIED MAIL

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

SENT TO		<i>Piscitelli, Michael</i>		
STREET AND NO.		<i>501 Plum St.</i>		
P.O., STATE AND ZIP CODE		<i>Syracuse, N.Y. 13202</i>		
POSTAGE		\$		
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE		¢	
	OPTIONAL SERVICES	SPECIAL DELIVERY	¢	
		RESTRICTED DELIVERY	¢	
		RETURN RECEIPT SERVICE	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 230 844 409

RECEIPT FOR CERTIFIED MAIL

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

SENT TO		<i>Thomas Piscitelli</i>		
STREET AND NO.		<i>1419 Barnard Rd</i>		
P.O., STATE AND ZIP CODE		<i>Syracuse, N.Y. 13215</i>		
POSTAGE		\$		
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE		¢	
	OPTIONAL SERVICES	SPECIAL DELIVERY	¢	
		RESTRICTED DELIVERY	¢	
		RETURN RECEIPT SERVICE	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

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany New York 12227	Date of Request 1/5/83
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number 68-16-3453	Date of Petition
Name Thomas Piscitelli	
Address Office of Piscitelli Block Co Inc 4949 Carrigan Rd Syracuse N.Y. 13215	

Results of search by Files

<input type="checkbox"/> New address:	NIF RP 81 RP 80 RP 79
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

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

CLAIM CHECK
NO.

12/15
11/20
DATE

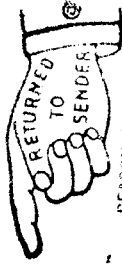
12/16/82
1ST NOTICE

12/21/82
2ND NOTICE

12/31/82
RETURN

Detached from
PS Form 38,
Oct. 1980

Thomas Piscitelli
Officer of Piscitelli Block Co., Inc.
4949 Carnarvon Rd
Syracuse, NY 13215



REASON CHECKED

Unclaimed _____ Returned _____

Addressed unknown _____

Insufficient Address _____

No such street _____ number _____

No such office in state _____

Do not remail in this envelope

