

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
PRAM AUTO COLLISION, INC.	:	
and	:	DECISION
FRAME AUTO COLLISION, 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 June 1, 1971	:	
through November 5, 1973.	:	

Petitioner Pram Auto Collision, Inc., 71 Denton Avenue, New Hyde Park, New York 11040, filed a petition for a hearing to review a determination of sales and use taxes due under Articles 28 and 29 of the Tax Law (File No. 15066).

Petitioner Frame Auto Collision, Inc., 71 Denton Avenue, New Hyde Park, New York 11040, filed a petition for a hearing to review a determination of sales and use taxes due under Articles 28 and 29 of the Tax Law (File No. 15065).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York City, on January 19, 1978 and on February 7, 1979. Petitioner Pram Auto Collision, Inc. appeared by Edward Henry, PA. Petitioner Frame Auto Collision, Inc. appeared by O'Brien, Carrieri & Lynch, Esqs. (Robert P. O'Brien, and Joseph R. Carrieri, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly estimated the sales tax liability of Pram Auto Collision, Inc.

II. Whether Frame Auto Collision, Inc. is liable for sales taxes due from Pram Auto Collision, Inc. pursuant to the bulk sale provisions of section 1141(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Pram Auto Collision, Inc. (Pram) operated an automobile body repair business located at 71 Denton Avenue, New Hyde Park, New York. On or about November 5, 1973 Pram sold its business assets, consisting of tools, to Frame Auto Collision, Inc. (Frame) for \$5,500.00. The Audit Division received notification of said sale on or before April 17, 1974. Sometime thereafter, Pram also sold a truck to Frame for \$2,000.00 on which the sales tax was paid by Frame directly to the Department of Motor Vehicles at the time of registration. Frame remitted a bulk sales tax of \$375.00 for the purchase of the tools on May 7, 1974.

2. On April 17, 1974, the Audit Division issued a Notice of Claim To Purchaser serving notice to Frame of a possible claim for New York State and local sales and use taxes.

3. On March 20, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Pram and its officers, John Monaham, President and Ralph Nieto, secretary-treasurer, covering the period June 1, 1971 through November 5, 1973 for taxes due of \$8,186.65, plus penalty and interest of \$2,738.90, for a total of \$10,925.55.

On the same date, a Notice of Demand for Payment of Sales and Use Taxes Due against Frame for the identical amount as above in accordance with section 1141(c) of the Tax Law. However, by letter dated June 17, 1976, said notice was adjusted to \$7,500.00, the total purchase price of the business assets.

The adjustment reflects a reduction in the bulk sales tax to \$10.00. ($\$5,500.00 \times 7\% = \385.00 less tax paid of \$375.00)

4. Pram executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1971 through November 30, 1971, to March 20, 1975.

5. The additional taxes determined due from Pram were estimated based on the sales tax returns filed by Frame which showed gross sales of approximately twice what Pram reported during the period at issue. Therefore, Pram's reported gross sales of \$79,962.00 were increased 100 percent to arrive at taxable sales of \$159,924.00 and tax due thereon of \$10,752.72. Pram paid taxes of \$2,961.07, leaving additional taxes due of \$7,791.65. The Division also increased the selling price of the tools by 100 percent, resulting in additional bulk sales tax due of \$395.00.

6. Petitioners have exhibited invoices of Pram which total the sales shown to be taxable on the sales tax returns of Pram. These are the only records produced. Petitioners have not produced any sales books or other records to show alleged nontaxable sales or to provide a check against the accuracy of these reported sales.

7. The sale by Pram to Frame did not include any goodwill or customers list. The price paid by Frame was adequate only to cover the physical tools transferred. This was adequately shown by expert testimony of Mr. Frank Conte, President of the Long Island Auto Body Repairman's Association.

8. The business done by Pram was in no way comparable to the business done by the purchaser, Frame. Pram, in the months immediately prior to the sale, had no apparent customers, its space was used to fix its employees' own automobiles and not for customers' cars. It had already lost the business it

had done for the local police and fire departments. Frame started business with the customers who had done business at other locations with Mr. Sucari and Mr. Estizariba, the stockholders of Frame.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides, in part, that if necessary, tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors.

That the Audit Division, in the absence of adequate books and records was authorized to estimate the taxes due from Pram. However, petitioners have shown by a fair preponderance of the evidence that the business conducted by Frame was not comparable to that of Prams in that Frame generated far greater sales, therefore, the additional taxes determined on the basis of such comparison was not accurate. The sales reported by Pram on sales tax returns filed reasonably reflect the business activities. Accordingly, the additional taxes of \$7,791.65 asserted against Pram are cancelled and the bulk sales tax of \$395.00 is reduced to \$10.00, the unpaid balance referred to in Finding of Fact "3".

B. That the tax liability of Frame is derivative as the purchaser in a bulk sale transaction. Therefore, since the additional taxes determined due from Pram are reduced to \$10.00, said taxes asserted against Frame are also reduced accordingly. Moreover, the Audit Division failed to give notice to Frame of the total amount of taxes which New York State claimed to be due from Pram within 180 days (changed to 90 days effective January 1, 1978) from receipt of notice of the sale as prescribed in section 1141(c) of the Tax Law.

C. That the petitions of Pram Auto Collision, Inc. and Frame Auto Collision, Inc. are granted to the extent indicated in Conclusions of Law "A" and "B"; that the Audit Division is hereby directed to modify the notices referred to in Finding of Fact "3" and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

FEB 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 230 842 184
RECEIPT FOR CERTIFIED MAIL

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

PS Form 3800, Apr. 1976

SENT TO		<i>Joseph H. Chierici</i>	
STREET AND NO.		<i>Offices Caricci High</i>	
P.O., STATE AND ZIP CODE		<i>114 Old Country Rd. Manhasset N.Y. 11521</i>	
POSTAGE		<i>11521</i>	
CONSULT POSTMASTER FOR FEES	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			

P 230 842 183
RECEIPT FOR CERTIFIED MAIL

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

PS Form 3800, Apr. 1976

SENT TO		<i>Primo Auto Collision Inc.</i>	
STREET AND NO.		<i>71 Denton Ave</i>	
P.O., STATE AND ZIP CODE		<i>New Hyde Park, N.Y.</i>	
POSTAGE		<i>11040</i>	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		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			

P 230 842 185
RECEIPT FOR CERTIFIED MAIL

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 (See Reverse)

PS Form 3800, Apr. 1976

SENT TO		<i>Primo Auto Collision Inc.</i>	
STREET AND NO.		<i>71 Denton Ave</i>	
P.O., STATE AND ZIP CODE		<i>New Hyde Park, N.Y.</i>	
POSTAGE		<i>1104</i>	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		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			

P 230 842 186
RECEIPT FOR CERTIFIED MAIL

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

PS Form 3800, Apr. 1976

SENT TO		<i>Edmund Henry</i>	
STREET AND NO.		<i>219 Spruce Street</i>	
P.O., STATE AND ZIP CODE		<i>Syracuse, N.Y.</i>	
POSTAGE		<i>1104</i>	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		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			

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Pram Auto Collision, Inc. : AFFIDAVIT OF MAILING
and :
Frame Auto Collision, 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 Years :
1971 - 1973.

State of New York
County of Albany

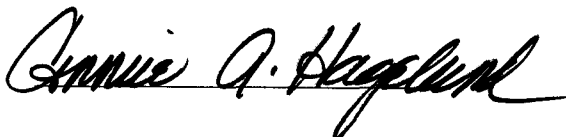
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of February, 1982, he served the within notice of Decision by certified mail upon Pram Auto Collision, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

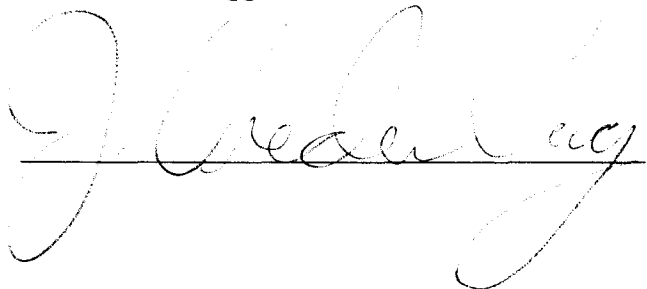
Pram Auto Collision, Inc.
71 Denton Ave.
New Hyde Park, NY 11040

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
11th day of February, 1982.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Pram Auto Collision, Inc. :
and :
Frame Auto Collision, 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 Years :
1971-1973.

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 11th day of February, 1982, he served the within notice of Decision by certified mail upon Joseph R. Carrieri the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph R. Carrieri
O'Brien, Carrieri & Lynch
114 Old Country Rd.
Mineola, NY 11501

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
11th day of February, 1982.

Conni A. Huglund

J. Vredenburg

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

February 11, 1982

Frame Auto Collision, Inc.
Purchaser of Pram Auto Collision, Inc.
71 Denton Ave.
New Hyde Park, NY 11040

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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph R. Carrieri
O'Brien, Carrieri & Lynch
114 Old Country Rd.
Mineola, NY 11501
Taxing Bureau's Representative

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

February 11, 1982

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71 Denton Ave.
New Hyde Park, NY 11040

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NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Edward Henry
219 Syosset-Woodbury Rd.
Syosset, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Pram Auto Collision, Inc. :

and

Frame Auto Collision, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
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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 11th day of February, 1982, he served the within notice of Decision by certified mail upon Frame Auto Collision, Inc., Purchaser of Pram Auto Collision, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frame Auto Collision, Inc.
Purchaser of Pram Auto Collision, Inc.
71 Denton Ave.
New Hyde Park, NY 11040

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
11th day of February, 1982.

Annice A. Haglund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Pram Auto Collision, Inc. : AFFIDAVIT OF MAILING
and :
Fram Auto Collision, Inc. :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax
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State of New York
County of Albany

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Edward Henry
219 Syosset-Woodbury Rd.
Syosset, NY

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.

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Sworn to before me this
11th day of February, 1982.

Cornelia A. Haylund

J. Vredenburg