

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

December 3, 1982

Syracuse Aircraft Sales & Service
c/o Walter G. Rusyniak, President
1100 Malden Road
Syracuse, NY 13211

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
Robert Fagliarone
Grimaldi, Woods & Fagliarone
627 W. Genesee St.
Syracuse, NY 13204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SYRACUSE AIRCRAFT SALES AND SERVICE, 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, 1973
through August 31, 1976.

DECISION

Petitioner, Syracuse Aircraft Sales and Service, Inc., c/o Walter G. Rusyniak, 1100 Malden Road, Syracuse, New York 13211, 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, 1973 through August 31, 1976 (File No. 21975).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 27, 1981 at 1:15 P.M. Petitioner appeared by Robert Fagliarone, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from petitioner for the period March 1, 1973 through August 31, 1976.

FINDINGS OF FACT

1. Petitioner, Syracuse Aircraft Sales and Service, Inc. ("Syracuse"), was incorporated on February 14, 1973, the business activity of which was to sell and service airplanes. Walter G. Rusyniak was the President and sole stockholder of petitioner corporation as well as Baldwinsville Building Supply

Co., Inc. and Wal-Mar Construction Corp. Mr. Rusyniak also conducted business as a sole proprietor.

2. On November 26, 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 Syracuse, covering the period March 1, 1973 through August 31, 1976 for taxes due of \$17,710.00, plus penalty and interest of \$7,504.00, for a total of \$25,214.00.

3. Petitioner, Syracuse, did not maintain books and records until October, 1975. Petitioner filed U.S. Corporation Income Tax Returns for 1973, 1974 and 1975 showing no gross sales. The Audit Division examined the checkbooks of Walter G. Rusyniak for 1972, 1973 and 1974 from which the auditor listed deposits and payments that indicated the sale and purchase of boats, motors, snowmobiles, airplanes and soap products. Based on available information, the Audit Division estimated sales of \$253,000.00 and taxes due thereon of \$17,710.00.

4. Petitioner, Syracuse, introduced documentary evidence to indicate that it did not conduct any business until the latter part of 1975. The first evidence of any sales by petitioner was 1976. The transactions described in Finding of Fact "3" above were made by Walter G. Rusyniak, individually.

CONCLUSIONS OF LAW

A. That in the absence of adequate books and records, the Audit Division properly determined sales taxes due from such information as was available in accordance with section 1138(a) of the Tax Law. However, the bank deposits and purchases which formed the basis for the determination were those of Walter G. Rusyniak as a sole proprietor. That petitioner established by substantial evidence that it did not make sales until 1976. Accordingly, the additional taxes determined were incorrectly assessed against petitioner.

B. That the petition of Syracuse Aircraft Sales and Service, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 26, 1976 is cancelled.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION



ACTING PRESIDENT



COMMISSIONER



COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Syracuse Aircraft Sales & Service :
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 3/1/73-8/31/76. :
:

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Syracuse Aircraft Sales & Service, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Syracuse Aircraft Sales & Service
c/o Walter G. Rusyniak, President
1100 Malden Road
Syracuse, NY 13211

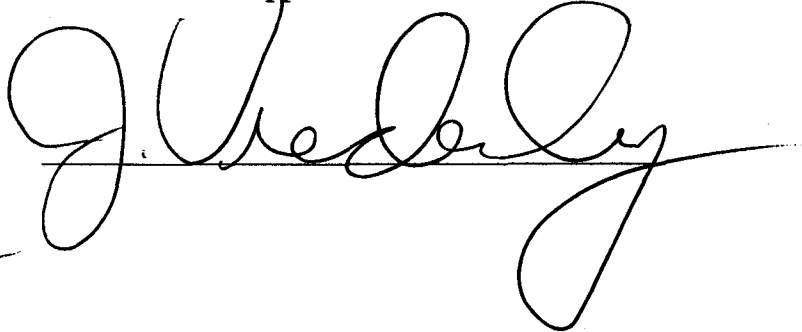
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd 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 :
Syracuse Aircraft Sales & Service :
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 3/1/73-8/31/76. :
:

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Robert Fagliarone the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Fagliarone
Grimaldi, Woods & Fagliarone
627 W. Genesee St.
Syracuse, NY 13204

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



P 230 844 245
RECEIPT FOR CERTIFIED MAIL

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

SENT TO		<i>Robert Fugliarone</i>	
STREET AND NO.		<i>Drumaldi Undergarment</i>	
P.O., STATE AND ZIP CODE		<i>127 W. Leavick St.</i>	
POSTAGE		<i>\$ 1.00</i>	
CERTIFIED FEE		<i>\$ 1.00</i>	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	SPECIAL DELIVERY	<i>0</i>
		RESTRICTED DELIVERY	<i>0</i>
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	<i>0</i>
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	<i>0</i>
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	<i>0</i>
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	<i>0</i>
TOTAL POSTAGE AND FEES		<i>\$ 2.00</i>	
POSTMARK OR DATE			

PS Form 3800, Apr. 1976

P 230 844 244
RECEIPT FOR CERTIFIED MAIL

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

SENT TO		<i>James Aircraft Service</i>	
STREET AND NO.		<i>400 H. Kuyperial Cus</i>	
P.O., STATE AND ZIP CODE		<i>1100 Malden Rd.</i>	
POSTAGE		<i>\$ 1.00</i>	
CERTIFIED FEE		<i>\$ 1.00</i>	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	SPECIAL DELIVERY	<i>0</i>
		RESTRICTED DELIVERY	<i>0</i>
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	<i>0</i>
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	<i>0</i>
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	<i>0</i>
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	<i>0</i>
TOTAL POSTAGE AND FEES		<i>\$ 2.00</i>	
POSTMARK OR DATE			

PS Form 3800, Apr. 1976