

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

September 8, 1982

Lawrence Winters  
18-06 157th St.  
Whitestone, NY 11357

Dear Mr. Winters:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Mitchell Greene  
Sherman & Citron, P.C.  
1290 Ave. of the Americas  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

LAWRENCE WINTERS

DECISION

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, 1975  
through August 31, 1978.

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Petitioner, Lawrence Winters, 18-06 157th Street, Whitestone, New York 11357, 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, 1975 through August 31, 1978 (File No. 26810).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 4, 1981, at 9:15 A.M. Petitioner appeared by Sherman & Citron, P.C. (Mitchell Greene, Esq. of Counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether petitioner, Lawrence Winters, as an officer of 62-06 Food Corporation, is personally liable for additional taxes and interest due from such corporation.

#### FINDINGS OF FACT

1. A field audit was performed by the Audit Division on which an additional sales and/or use tax liability was determined due from 62-06 Food Corporation in the amount of \$16,658.75. On April 20, 1979, petitioner, Lawrence Winters, signed a Consent to Fixing of Tax Not Previously Determined and Assessed as president of such corporation.

2. On April 23, 1979, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against Lawrence Winters for the period March 1, 1975 through August 31, 1978 for his personal liability as officer of 62-06 Food Corporation under sections 1131(1) and 1133(a) of the Tax Law. The Notice assessed the additional tax of \$16,658.75 found due on audit in accordance with section 1138(a) of the Tax Law, plus interest of \$3,535.36, for a total of \$20,194.11.

3. Petitioner executed two consents to extend the period of limitation for assessment, the first extending the period to December 20, 1978, and the second extending the period to December 20, 1979. Both consents were signed by petitioner as president of 62-06 Food Corporation.

4. On June 29, 1979, Lawrence Winters filed a petition alleging that although he was an officer of 62-06 Food Corporation, he was not responsible for collecting and paying any taxes of the corporation. In this petition, he also advised that 62-06 Food Corporation was presently in bankruptcy and that it was believed that there were sufficient funds in possession of the trustee in bankruptcy to pay any priority tax claims filed in the bankruptcy proceeding.

5. Petitioner signed three of the sales and use tax returns introduced by the Audit Division. Four of the sales and use tax returns were signed by another individual as owner. The remainder of the returns in the file were unsigned.

6. Petitioner was actively involved in the day-to-day business operations and made his living from the salary earned from the business. Petitioner's responsibilities included the ordering of merchandise and overseeing the general operations of the business. Petitioner had the ability to prefer creditors as he was an authorized signatory of the corporate checking account

and was involved in the handling of the funds of the corporation. Petitioner owned 50 percent of the stock of 62-06 Food Corporation.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides that every person required to collect tax imposed by Article 28 of the Tax Law shall be personally liable for tax imposed, collected or required to be collected.

B. That section 1131(1) of the Tax Law in defining persons required to collect tax, includes those corporate officers who are under a duty to act for such corporation in complying with any requirement of Article 28 of the Tax Law.

C. That petitioner, Lawrence Winters, as president of 62-06 Food Corporation, was more than passively involved in the operation of the closely held corporation. By reason of petitioner's day-to-day responsibilities and involvement in the operation, petitioner was an officer under a duty to act for such corporation in complying with the requirements of Article 28 of the Tax Law.

D. That the petition of Lawrence Winters is denied and the Notice and Demand for Payment of Sales and Use Taxes Due issued on April 23, 1979 is sustained.


DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Lawrence Winters

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 3/1/75-8/31/78.

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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Lawrence Winters, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence Winters  
18-06 157th St.  
Whitestone, NY 11357

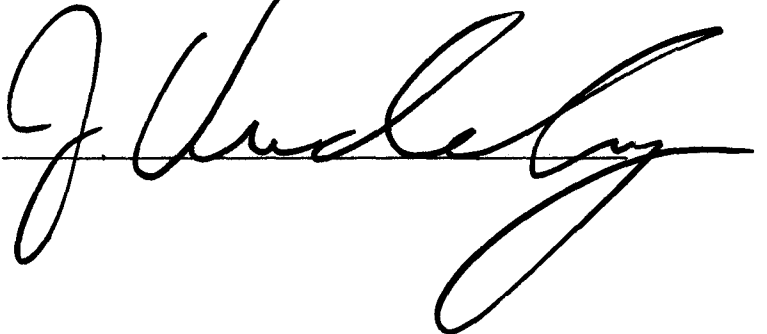
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
8th day of September, 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 :  
Lawrence Winters :

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 3/1/75-8/31/78. :

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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Mitchell Greene the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mitchell Greene  
Sherman & Citron, P.C.  
1290 Ave. of the Americas  
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 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  
8th day of September, 1982.

*Connie A. Hagelrud*

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

*J. Vredenburg*

**P 230 842 804**  
**RECEIPT FOR CERTIFIED MAIL**

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

SENT TO		Mitchell Greene	
STREET AND NO.		Sherman Citrow 1290 Ave of The Americas	
P.O., STATE AND ZIP CODE		New York N.Y 10019	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		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 230 842 803**  
**RECEIPT FOR CERTIFIED MAIL**

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

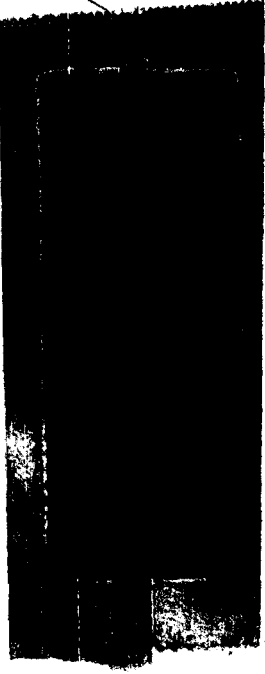
SENT TO		Lawrence Winters	
STREET AND NO.		18-06 157th St	
P.O., STATE AND ZIP CODE		Whitestone N.Y 11357	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, 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

TA 26 (9-79)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

~~( ) Moved, lot no changed~~  
~~( ) No such amount~~  
~~( ) Moved, not investigated~~  
~~( ) Addressee unknown~~

~~Lawrence Winters  
18-06 157th St.  
Whitestone, NY 11357~~



TAX APPEALS BUREAU  
SEP 20 1982  
RECEIVED

*Winters*  
*18-06 157th St*  
*Whitestone NY*  
*Moved 2/78*



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

September 8, 1982

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DATED: Albany, New York

SEP 08 1982

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COMMISSIONER

  
COMMISSIONER